

Executive Session at 4:00 p.m.

Roll Call.

PLEASE NOTE: The City of Fargo Board of City Commissioners will convene at 4:00 p.m. and retire into Executive Session for the purpose of attorney consultation to discuss ongoing negotiations regarding the Roers-Newman Block Property - Tax Increment Financing District No. 2019-02. The Executive Session will allow discussion of negotiating strategy and to provide negotiating instructions to the City Attorney or other negotiator with respect to the Developer Agreement at issue. Any negotiation between the City and the Developer has financial implications and to discuss this matter in an open meeting will have a negative fiscal effect on the bargaining and/or potential litigation position of the city. Thus, an Executive Session for this matter is authorized pursuant to North Dakota Century Code § 44-04-19.1 subsections 2 and 9.

Regular Meeting at 5:00 p.m.

City Commission meetings are broadcast live on TV Fargo Channel 56 and online at www.FargoND.gov/streaming. They are rebroadcast Mondays at 5:00 p.m., Thursdays at 7:00 p.m. and Saturdays at 8:00 a.m. They are also included in the video archive at www.FargoND.gov/citycommission.

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, May 16, 2022).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. 2nd reading and final adoption of the following Ordinances; 1st reading, 5/16/22:
 - a. Relating to Classification of Ordinance Violations.
 - b. Relating to the International Building Code.
 - c. Relating to the International Residential Code.
 - d. Relating to the International Existing Building Code.
 - e. Relating to the International Mechanical Code.
 - f. Relating to the International Fuel Gas Code.
 - g. Relating to the International Property Maintenance Code.
 - h. Relating to the International Energy Conservation Code.
 - i. Relating to Fire Protection and Prevention.
 - j. Relating to Civil Service-Rules and Regulations.
 - k. Rezoning Certain Parcels of Land Lying in Maplewood Estates Second Addition.
- 2. Site Authorizations for Games of Chance:
 - a. Sharehouse, Inc. at Woody's.
 - b. Sharehouse, Inc. at RoundUp Saloon.
 - c. Sharehouse, Inc. at Rick's Bar.
 - d. Sharehouse, Inc. at Bismarck Tavern.

- e. Sharehouse, Inc. at Baymont Inn/Alibi Lounge.
 - f. North Dakota Association for the Disabled, Inc. at Cowboy Jack's.
 - g. North Dakota Association for the Disabled, Inc. at O'Kelly's.
 - h. North Dakota Association for the Disabled, Inc. at Bulldog Tap.
 - i. Fraser, Ltd. at Space Aliens.
 - j. Fraser, Ltd. at Golf Addiction.
 - k. VFW Post 762 at VFW Club.
 - l. Metro Sports Foundation at Country Inn and Suites.
 - m. Metro Sports Foundation at Brewtus Clubhouse.
 - n. Metro Sports Foundation at Mexican Village.
 - o. Metro Sports Foundation at Scheels Arena.
 - p. Metro Sports Foundation at Radisson Blu.
 - q. Metro Sports Foundation at Twin Peaks.
3. Applications for Games of Chance:
 - a. UND Alumni Association and Foundation for a raffle on 6/22/22.
 - b. River Keepers for a raffle on 6/13/22.
 4. Amendment No. 3 with Houston Engineering in the amount of \$20,000.00 for Project No. FM-22-C1.
 5. Amendment No. 2 with SRF Consulting Group in the amount of \$36,284.00 for Project No. MS-16-J0.
 6. Bid award for Project No. FM-19-C1.
 7. Right of Way Use Agreement with J-Street Properties, LLC.
 8. Concur with the recommendations from PWPEC and approve the project applications, as listed, as the City's priorities to apply for Federal Highway Administration funds through Metro COG.
 9. Scope of Services with Houston Engineering for the environmental review phase of the pedestrian bridge over the Red River at 40th Avenue South.
 10. Encroachment Agreement (Sidewalk Dining) with Block 9 Hotel, LLC and Aparium Hotel Group, LLC d/b/a Jasper Hotel at 215 Broadway.
 11. Variance Acknowledgement and Liability Waiver with Austin J. and Laura Morris for construction at 3717 Grandwood Drive North.
 12. Bid award for the Municipal Court Reroof Project (AFB22088).
 13. Purchase of Service Agreement with Central Cass Public School District.
 14. Purchase of Service Agreement with Kindred Public School District.
 15. Grant from the Bob Woodruff Foundation for the ND Cares Veteran Program.
 16. Funding for the Public Art projects, as presented.
 17. Extension of unpaid leave for Tracy Zablotney through 9/23/22.
 18. 2022 Mosquito Control Agreement with Cass County Government.

20. Solid Waste Management Agreement for Private Haulers in the City of Fargo with Northland Roll-off, LLC.
21. Bid advertisement for the following Projects:
 - a. No. WA2152.
 - b. No. WA2255-LSWTP Filter Rehabilitation.
22. Contract and bond for Project No. FM-22-C3.
23. Bills.
24. Bid award for Improvement District No. BN-22-F1.
25. Contract and bond for Improvement District No. PN-22-A1.

REGULAR AGENDA:

26. **RESIDENT COMMENTS (Fargo residents will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments. Residents who would like to address the Commission, whether virtually or in person, must sign-up at FargoND.gov/VirtualCommission).**
27. ***Public Input Opportunity* - PUBLIC HEARINGS - 5:15 pm:**
 - a. Application for the transfer of a Class "AB" Alcoholic Beverage License from License Holdings, LLC d/b/a Pickled Parrot to BBDT LLC Investments d/b/a Bottle Barn Off Broadway to be located at 618 2nd Avenue North.
 - b. Magnum North Addition (4903 19th Avenue North); approval recommended by the Planning Commission on 4/5/22:
 1. Zoning Change from AG, Agricultural to GI, General Industrial.
 2. 1st reading of rezoning Ordinance.
 3. Plat of Magnum North Addition.
 - c. Laverne's Second Addition (4200 32nd Avenue North and 2867 45th Street North); approval recommended by the Planning Commission on 3/1/22:
 1. Zoning Change from AG, Agricultural to LI, Limited Industrial and P/I, Public and Institutional.
 2. 1st reading of rezoning Ordinance.
 3. Plat of Laverne's Second Addition.
 - d. Christianson 32nd Avenue South Second Addition (3102 36th Street South and 3401 32nd Avenue South); approval recommended by the Planning Commission on 4/5/22:
 1. Zoning Change from GC, General Commercial and LI, Limited Industrial with a C-O, Conditional overlay to GC, General Commercial with a C-O, Conditional Overlay.
 2. 1st reading of rezoning Ordinance.
 3. Plat of Christianson 32nd Avenue South Second Addition.

- e. Annexation of property located at 6688 45th Street South in the Northwest Quarter of Section 10, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota.
 1. 1st reading of annexation Ordinance.
 - f. Covey Ranch Second Addition (6688 45th Street South); approval recommended by the Planning Commission on 4/5/22:
 1. Growth Plan Amendment on a portion of the proposed Covey Ranch Second Addition from Medium Density Residential and High Density Residential to Proposed School.
 2. Zoning Change from AG, Agricultural to P/I, Public and Institutional with a C-O, Conditional Overlay.
 3. 1st reading of rezoning Ordinance.
 4. Plat of Covey Ranch Second Addition.
 - g. Westrac Third Addition (3315 and 3361 Westrac Drive); approval recommended by the Planning Commission on 2/1/22:
 1. Zoning Change from GC, General Commercial with a PUD, Planned Unit Development and AG, Agricultural to GC, General Commercial with a PUD, Planned Unit Development and LI, Limited Industrial with a C-O, Conditional Overlay.
 2. 1st reading of rezoning Ordinance.
 3. Plat of Westrac Third Addition.
 - h. Renaissance Zone Project for Great Plains Block 3 Venture, LLC for a new construction project at 225 4th Avenue North and 419 3rd Street North.
 - i. Development Agreement for Tax Increment Financing District No. 2021-01 (419 3rd Street North and 225 4th Avenue North).
 - j. Application filed by Amity Technology, LLC for a property tax exemption for a project located at 401 27th Street North which the applicant will use in the operation of manufacturing and storage of a new product called Crop Chaser for dairy farmers.
 - k. Application filed by Weather Modification, LLC for a property tax exemption for a project to be located at 3802 20th Street North which the applicant will use in the operation of providing aircraft modification services.
28. Presentation of the Landfill Gas Purchase and Sale Agreement with Cargill, Inc.
 - a. Recommendation to approve the 10-year Landfill Gas Purchase and Sale Agreement with Cargill, Inc.
29. Wildlife Management Program Update.
30. Proposal from The Chamber of Fargo Moorhead West Fargo to lease land from the City at 2001 44th Street South.
31. Update on Police patrols.
32. 1st reading of an Ordinance Relating to Designated Passenger Loading Areas and Relating to Classification of Ordinance Violations.

Page 35. Discussion regarding the June 14, 2022 Election ballot wording errors.

34. Application for a property tax exemptions for Improvements Made to Buildings for David Huebner, 1005 4th Street North (5 year).

People with disabilities who plan to attend the meeting and need special accommodations should contact the Commission Office at 701.241.1310 at least 48 hours before the meeting to give our staff adequate time to make arrangements.

Minutes are available on the City of Fargo website at www.FargoND.gov/citycommission.

27a

NOTICE OF HEARING

Application for Alcoholic Beverage License Transfer

Notice is hereby given that the Board of City Commissioners of the City of Fargo, North Dakota, will conduct a Public Hearing in the City Commission Room, City Hall, on Tuesday, May 31, 2022 at 5:15 o'clock p.m. to consider an application for transfer of a Class "AB" Alcoholic Beverage License from License Holdings, LLC d/b/a Pickled Parrot, to BBDT LLC Investments d/b/a Bottle Barn Off Broadway to be located at 618 2nd Ave N, Fargo.

Any interested person may appear and will be heard.

City Auditor's Office
(May 11, 2022)

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Transfer Application – Bottle Barn Off Broadway

DATE: May 20, 2022

The following application for a liquor license transfer was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class: AB
Business Name: Bottle Barn Off Broadway
Location: 618 2nd Ave North
Applicants: Joel Wold & Katheryn Wold

The request is to transfer a Class AB license from Pickled Parrot to Bottle Barn; Kilbourne closed the bar when the Block 9 building was constructed. Mr. Wold will operate just an off sale component. His intention is to operate off sale only and not sell drinks the Police Department has had issues with in the downtown in the past.

Being no significant concerns, the Liquor Control Board voted to approve the transfer of a Class AB alcoholic beverage license to BBDT LLC d/b/a Bottle Barn Off Broadway. The complete application is available for review in the Auditor's Office.

Recommended Motion:

Move to approve the transfer of a Class AB alcoholic beverage license to BBDT LLC d/b/a Bottle Barn Off Broadway.



Fargo Police Department

To: Chief David Zibolski

From: Sergeant Carlos Nestler *C. Nestler*

Date: May 10, 2022

RE: Liquor License Transfer Application (Bottle Barn Off Broadway)

Application for Transfer of a Class "AB" Alcoholic Beverage License from License Holdings, LLC d/b/a Pickled Parrot, to BBDT LLC Investments d/b/a Bottle Barn Off Broadway to be located at 618 2nd Ave N, Fargo.

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation I examined the applicants' credit reports and public records criminal backgrounds.

The following information was discovered through this investigation:

Wold, Joel Patrick – Owner

Criminal History-

A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov) and Minnesota public records (<https://chs.state.mn.us/>) showed no criminal activity.

Credit History-

Joel P. Wold's credit report was reviewed. There are no prior bankruptcies or debts turned over to collections.



Fargo Police Department

Wold, Kathryn Rachel – Owner/Manager

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov) and Minnesota public records (<https://chs.state.mn.us/>) showed no criminal activity.

Credit History- Kathryn R. Wold's credit report was reviewed. The credit reports states there are no trades on file. There is only one account listed, which may be from a collection agency. The past due is \$98. There are no prior bankruptcies.

Investigation Notes

This application is for a transfer of a class "AB" Alcoholic Beverage License which allows the licensee to sell alcohol "on sale" or "off sale". "Off-Sale" licensed premises must be no closer than 100 feet to any grocery store, drug store or gasoline service station or any part thereof.

On 5/10/2022, I spoke to Kathryn Wold. Kathryn will be the on-site manager at Bottle Barn Off Broadway. We talked about the missing paperwork from her application file. I had emailed her last week about having a conversation about the application and I sent her a copy of page 3 which needs her initials. She sent me back the page 3 information which she initialed and I have included it in the attached application packet. Kathryn told me she would have page 12 notarized and send it to Steve Sprague.

Kathryn's credit report was reviewed and it was listed as, "no trades on file". Kathryn is young and she has not established a credit history yet. There was only one entry on her credit report. It appears to be from a collection agency. It started as a \$100 account and is now listed as \$98 past due. Kathryn does not know what this charge could be from. She said she has not been notified of anything being past due or in collections. Kathryn is going to figure out what this past due account is from and take care of it.

The investigation into the criminal and credit history of the applicants did not find any issues related to criminal activity or significant problems with their credit.



Fargo Police Department

Business Location

The Bottle Barn Off Broadway will be located at 618 2nd Avenue North, Fargo, ND. Other businesses in the area with an alcoholic beverage license include: Sons of Norway, Wasabi/Poke Bowl, 46 North Pints & Provisions, The Boiler Room and the VFW.

Conclusion

This background investigation is being forwarded for your review and recommendation to the City of Fargo Liquor Control Board.

Carlos W. Meritt

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City of Fargo Staff Report			
Title:	Magnum North Addition	Date:	3-30-22
		Update:	5-25-22
Location:	4903 19 th Avenue North	Staff Contact:	Luke Morman, Planner
Legal Description:	Southeast Quarter of Section 28, Township 140 North, Range 49 West		
Owner(s)/Applicant:	David Gadberry (G2 Investments LLC)/Tony Eukel	Engineer:	MBN Engineering
Entitlements Requested:	Zone Change (Ag, Agricultural to GI, General Industrial) and Minor Subdivision (Plat of the Southeast Quarter of Section 28, Township 140 North, Range 49 West)		
Status:	City Commission Public Hearing: May 31, 2022		

Existing	Proposed
Land Use: Undeveloped	Land Use: Warehouse
Zoning: AG, Agricultural	Zoning: GI, General Industrial
Uses Allowed: Allows detached houses, parks and open areas, safety services, basic utilities, and crop production.	Uses Allowed: Allows detention facilities, health care facilities, safety services, basic utilities, adult entertainment centers, off-premise advertising, commercial parking, industrial service, manufacturing and production, warehouse and freight movement, wholesale sales, aviation, surface transportation, and mining.
Maximum Lot Coverage Allowed: N/A	Maximum Lot Coverage Allowed: Maximum 85% building coverage.

Proposal:

The applicant is seeking approval of 1) a Zone Change, and 2) a Minor Subdivision entitled **Magnum North Addition** for the subject property located at 4903 19th Avenue North. The proposed zoning map amendment would rezone the subject property from AG, Agricultural to GI, General Industrial. The proposed minor subdivision request is to plat the subject property into a one lot minor subdivision.

This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: Across the rail road, AG, Agricultural, undeveloped.
- East: P/I, Public and Institutional, detention pond.
- South: Across 19th Avenue North, GI, General Industrial, with vehicle service, warehouse, and office; LI, Limited Industrial, undeveloped.
- West: GI, General Industrial with a PUD; with manufacturing and production.

Area Plans:

According to the 2007 Growth Plan, the subject property is designated as "Industrial" as amended in 2015.



Context:

Schools: The subject property is located within the West Fargo School District, specifically within the Harwood Elementary, Cheney Middle, and West Fargo High schools.

Neighborhood: There is no neighborhood identified for the subject property.

Parks: There are no parks within a quarter mile of the subject property.

Pedestrian / Bicycle: There are ten foot wide trails along the south side of 19th Avenue North and the west side of 45th Street North.

Bus Route: There are no bus routes within a quarter mile of the subject property.

Staff Analysis:

Zoning

Section 20-0906.F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:

- 1. Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?**

Staff is unaware of any zoning map error in regards to the subject property. The property was zoned AG, Agricultural when it was annexed. At that time, no development was proposed. Now that development is proposed, the applicant requests a zoning change to GI, General Industrial.

(Criteria Satisfied)

- 2. Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?**

The development is served with city services (water, sewer, streets, police/fire protection, etc.) as well as other utility services as needed. The City Engineer and other applicable review agencies have reviewed this proposal. No deficiencies to provide the necessary public services, facilities and programs to this development have been identified.

(Criteria Satisfied)

3. Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?

Staff has no evidence that would suggest this proposal would adversely affect the condition or value of the property in the vicinity. Written notice of the proposal was sent to all property owners within 300 feet of the subject property. To date, staff has received no inquiries in response to these notices. Staff finds that the approval will not adversely affect the condition or value of the property in the vicinity.

(Criteria Satisfied)

4. Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?

The purpose of the LDC is to implement Fargo's Comprehensive Plan in a way that will protect the general health, safety, and welfare of the citizens. The 2007 Southwest Future Land Use Plan identified the subject property as suitable for industrial development. The requested zone change and plat would create one GI, General Industrial lot. Staff finds that the proposal is consistent with the purposes of the LDC, the Growth Plan, and other adopted policies of the City.

(Criteria Satisfied)

Minor Subdivision

The LDC stipulates that the following criteria is met before a minor plat can be approved:

- 1. Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**

This subdivision is intended to plat the subject property into a one lot minor subdivision entitled Magnum North Addition. The property within this plat is currently zoned AG, Agricultural, and it is proposed to change to GI, General Industrial. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has received no inquiries about the application. Staff has reviewed this request and finds that this application complies with standards of Article 20-06 and all applicable requirements of the Land Development Code.

(Criteria Satisfied)

- 2. Section 20-907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**

While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principals.

(Criteria Satisfied)

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and hereby waive the requirement to receive the rezoning Ordinance one week prior to the first reading and place the rezoning Ordinance on for the first reading and move to approve the proposed 1) zoning change from AG, Agricultural; to GI, General Industrial and 2) minor subdivision, **Magnum North Addition** as outlined within the staff report, as the proposal complies with the 2007 Growth Plan, standards of Section 20-0906.F (1-4), standards of Section 20-0907.B & C, standards of Article 20-06, and all other applicable requirements of the Land Development Code."

Planning Commission Recommendation: April 5, 2022

At the April 5th, 2022 Planning Commission hearing, by a vote of 7-0 with one commissioner absent and three Commission seats vacant, the Planning Commission moved to accept the findings and recommendations of staff

and recommended approval to the City Commission the proposed 1) zoning change from AG, Agricultural; to GI, General Industrial and 2) minor subdivision, **Magnum North Addition** as outlined within the staff report, as the proposal complies with the 2007 Growth Plan, standards of Section 20-0906.F (1-4), standards of Section 20-0907.B & C, standards of Article 20-06, and all other applicable requirements of the Land Development Code."

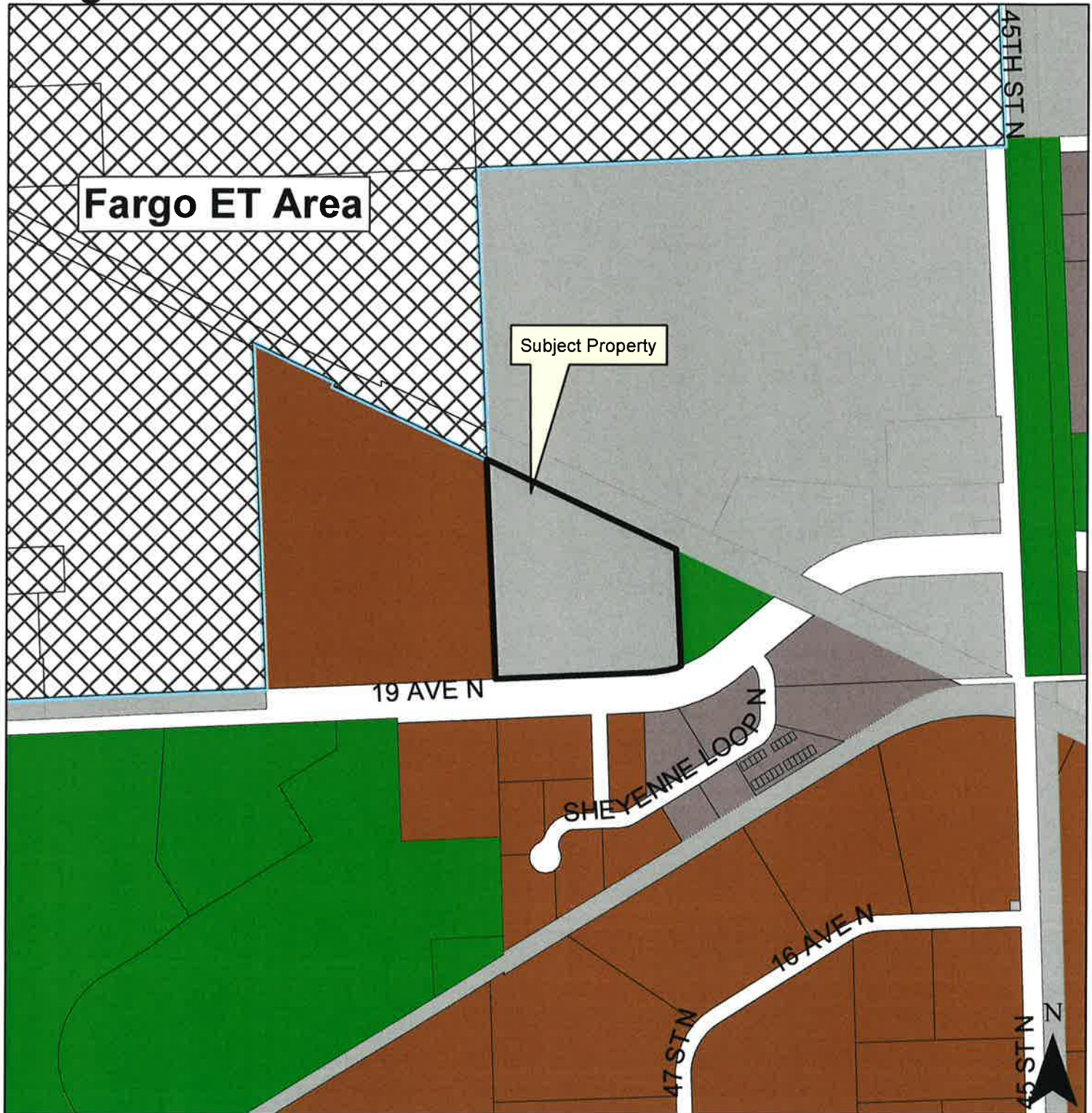
Attachments:

1. Zoning map
2. Location map
3. Preliminary plat

Plat (Minor); Zone Change (AG to GI)

Magnum North Addition

4903 19th Avenue N



Legend

AG	DMU	LC	MR-1	MR-2	MR-3	MHP	NC	UMU	SR-2	SR-3	SR-4	SR-5	City Limits	Land Outside Fargo City Limits
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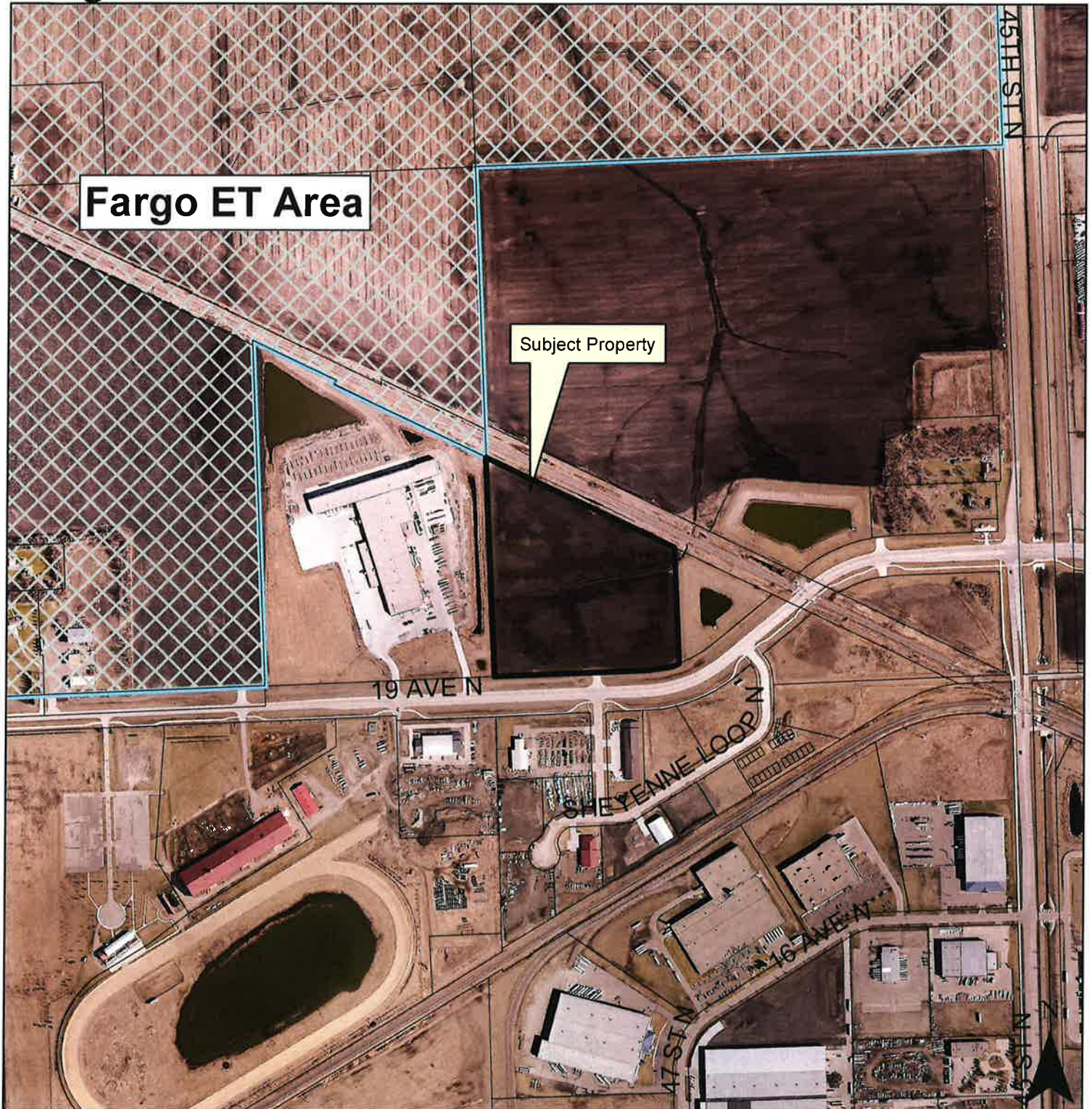
300 Feet

Fargo Planning Commission
April 5, 2022

Plat (Minor); Zone Change (AG to GI)

Magnum North Addition

4903 19th Avenue N



OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

2762

1 AN ORDINANCE REZONING A CERTAIN PARCEL
2 OF LAND LYING IN MAGNUM NORTH ADDITION
3 TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

4 WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the
5 City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain
6 parcels of land lying in the proposed Magnum North Addition to the City of Fargo, Cass County,
7 North Dakota; and,

8 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning
9 request on April 5, 2022; and,

10 WHEREAS, the rezoning changes were approved by the City Commission on May 31,
11 2022,

12 NOW, THEREFORE,

13 Be It Ordained by the Board of City Commissioners of the City of Fargo:

14 Section 1. The following described property:

15 All of Magnum North Addition to the City of Fargo, Cass County, North Dakota;
16 is hereby rezoned from "AG", Agricultural, District to "G/I", General Industrial, District.

17 Section 2. The City Auditor is hereby directed to amend the zoning map now on file in his
18 office so as to conform with and carry out the provisions of this ordinance.
19
20
21
22
23

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 3. This ordinance shall be in full force and effect from and after its passage and approval.

(SEAL)

Dr. Timothy J. Mahoney, M.D., Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

27c

City of Fargo Staff Report			
Title:	Laverne's Second Addition	Date: Update:	2/23/2022 5/26/2022
Location:	4200 32 nd Avenue North and 2867 45 th Street North	Staff Contact:	Donald Kress, current planning coordinator
Legal Description:	Portion of the Northwest Quarter of Section 27, T140N, R49W, City of Fargo, Cass County, North Dakota		
Owner(s)/Applicant:	Montplaisir Ag and Rental, LLP; Laverne A. Montplaisir Family Trust; Southeast Cass Water Resource District / Brian Pattengale—Houston Engineering	Engineer:	Houston Engineering
Entitlements Requested:	Major Subdivision (Portion of the Northwest Quarter of Section 27, T140N, R49W, City of Fargo, Cass County, North Dakota) Zone Change (from AG, Agricultural to LI, Limited Industrial and P/I, Public/Institutional)		
Status:	City Commission Public Hearing: May 31, 2022		

Existing	Proposed
Land Use: Undeveloped	Land Use: commercial and light industrial
Zoning: AG, Agricultural	Zoning: LI, Limited Industrial; P/I, Public/Institutional
Uses Allowed: AG – Agricultural. Allows detached houses, parks and open space, safety services, basic utilities, and crop production	Uses Allowed: LI – Limited Industrial. Allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self storage, vehicle repair, limited vehicle service, industrial service, manufacturing and production, warehouse and freight movement, wholesale sales, aviation, surface transportation, telecommunications structures, basic utilities P/I – Public and Institutional. Allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, schools, offices, commercial parking, outdoor recreation and entertainment, industrial service, manufacturing and production, warehouse and freight movement, waste related use, agriculture, aviation, surface transportation, and major entertainment events, basic utilities; telecommunications structures
Maximum Density Allowed (Residential): AG allows a maximum of 1 dwelling unit per 10 acres.	Maximum Lot Coverage Allowed: LI allows a maximum of 85% lot coverage; P/I has no maximum lot coverage

Proposal:

The applicant requests two entitlements:

1. A major subdivision, entitled **Laverne's Second Addition**, a five block, 33 lot major subdivision, which is a plat of a portion of the Northwest Quarter Section 27, T140N, R49W, City of Fargo, Cass County, North Dakota
2. A zoning change from AG, Agricultural to LI, Limited Industrial and P/I, Public/Institutional (the P/I designation will be applied to lots owned by SE Cass Water Resources District or City of Fargo).

This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: AG, Agricultural; undeveloped
- East: P/I, Public/Institutional—NDSU research area;
- South: LI with industrial uses; some lots not yet developed
- West: AG, Agricultural--residential use and undeveloped

Area Plans:

The 2007 Tier 1 Northwest Land Use Growth Plan designates most the area of this project as "Industrial Area" land use. That plan states that the proposed LI zoning is included within this land use designation. P/I zoning, for publicly owned facilities such as stormwater detention basins and Cass County drains, is appropriate in any land use designation.



Context:

Schools: The subject property is located within the West Fargo School District and is served by Harwood Elementary, Cheney Middle and West Fargo High schools.

Neighborhood: The subject property is not located within a designated neighborhood.

Parks: There are no public parks within one mile of the subject property.

Pedestrian / Bicycle: A multi-use path is intended for the right of way of 43rd Street, which will connect with the existing multi-use path in Laverne's Addition to the south. There is an off-road multi-use trail that is located approximately 0.42 miles south the project site along 19th Avenue North. Both paths are part of the metro area bikeways system.

Bus Route: The subject property is not along a MATBUS route.

Staff Analysis:**PLAT AND ZONE CHANGE**

The plat will create 33 lots in five blocks, zoned as shown in the chart below:

BLOCK	LOTS	ZONING	LAND USE
1	1-2	P/I	Cass County Drain No. 40 and adjacent levee, owned by SE Cass Water Resources District
1	3	P/I	To become City-owned detention basin
1	4-11	LI	Limited Industrial
2	1-8	LI	Limited Industrial
3	1-6	LI	Limited Industrial
4	1-4	LI	Limited Industrial
5	1-4	LI	Limited Industrial

The LI zoned lots range in size from 3.00 acres to 6.50 acres, with most lots being in the 3.50 to 4.50 - acre range. The P/I zoned lots range in size from 5.00 to 10.80 acres. There is no minimum required lot area in the LI or P/I zones.

ACCESS: The lots will be accessed by way of dedicated public streets. Necessary rights of way will be dedicated with the plat.

STORMWATER DETENTION BASIN: Lot 3, Block 1 will become a City owned stormwater detention basin.

TURNAROUNDS ON 28th and 30th AVENUES: The applicant has provided easements, by separate document, for 110-foot diameter turnarounds at the east ends of 28th and 30th Avenues North. These easements can be vacated if these avenues ever extend east beyond the boundaries of this subdivision.

PARKS No park dedication is required.

CROSSING OF COUNTY DRAIN 40: Though outside of this subdivision, the crossing of Drain 40 at 28th Avenue North will be completed with the development of 28th Avenue as part of the infrastructure request for this subdivision. The Southeast Cass Water Resources District has reviewed the drain-related matters related to this subdivision.

AIRPORT PROXIMITY AGREEMENT: The airport executive director has required an airport proximity agreement for this subdivision. Presented for the Commission's approval is the final agreement to be executed by the parties.

Zoning

Section 20-906. F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:

1. Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?

Staff is unaware of any error in the zoning map as it relates to this property. The property is currently zoned AG, Agricultural. The proposed zoning of LI and P/I is consistent with the 2007 Tier 1 Northwest Land Use Plan designation of "Industrial." **(Criteria Satisfied)**

2. Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?

City staff and other applicable review agencies have reviewed this proposal. Staff finds no deficiencies in the ability to provide all of the necessary services to the site. Lots in the subdivision will front on dedicated public streets. The necessary rights of way for these streets will be dedicated with the plat. These streets will provide access and public utilities to serve the development. **(Criteria satisfied)**

3. Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?

Staff has no documentation or evidence to suggest that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity. Written notice of the proposal was sent to all property owners within 300 feet of the subject property. To date, Planning staff has received one phone inquiry about the project. Staff finds that the approval of the zoning change will not adversely affect the condition or value of the property in the vicinity. **(Criteria satisfied)**

4. Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?

The LDC states "This Land Development Code is intended to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo." The Growth Plan that applies to this property is the 2007 Tier 1 Northwest Land Use Plan; this plan designates this property as appropriate industrial development, which would include the LI and P/I zones. Staff finds this proposal is consistent with the purpose of the LDC, the applicable growth plan, and other adopted policies of the City. **(Criteria satisfied)**

Subdivision

The LDC stipulates that the following criteria are met before a major plat can be approved

1. Section 20-0907(C))(1)(Development Review Procedures—Subdivisions—Major Subdivisions) of the LDC stipulates that no major subdivision plat application will be accepted for land that is not consistent with an approved Growth Plan or zoned to accommodate the proposed development.

The zoning for the development on this property is LI, Limited Industrial and P/I, Public/Institutional. The LI zoning will accommodate the proposed limited industrial development. The P/I zoning will accommodate the county drain and city-owned detention basin. The LI and P/I zoning designations are consistent with the "industrial" land use designation for this property in the 2007 Tier 1 Northwest Land Use Plan. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has received one phone inquiry about the project. **(Criteria Satisfied)**

2. **Section 20-0907.4 of the LDC further stipulates that the Planning Commission shall recommend approval or denial of the application and the City Commission shall act to approve or deny, based on whether it is located in a zoning district that allows the proposed development, complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**

The proposed zoning is LI and P/I. This zoning is consistent with the 2007 Northwest Tier 1 Land Use Plan which designates this property for industrial development. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments and found to meet the standards of Article 20-06 and other applicable requirements of the Land Development Code. **(Criteria Satisfied)**

3. **Section 20-0907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**

The applicant has provided a draft amenities plan that specifies the terms or securing installation of public improvements to serve the subdivision. This amenities plan has been reviewed by the Public Works Project Evaluation Committee (PWPEC). Any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles. **(Criteria Satisfied)**

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and hereby waive the requirement to receive the rezoning Ordinance one week prior to the first reading and place the rezoning Ordinance on for first reading and move to approve the proposed: 1) zone change from AG, Agricultural to LI, Limited Industrial and P/I, Public/Institutional; 2) **Laverne's Second Addition** subdivision plat as presented; as the proposal complies with the Go2030 Fargo Comprehensive Plan, 2007 Tier 1 Northwest Land Use Plan, Standards of Article 20-06, and Sections 20-0907 and 20-0906.F (1-4) of the LDC, and all other applicable requirements of the LDC; and 3) Airport Proximity Agreement."

Planning Commission Recommendation: March 1st, 2022

At the March 1st, 2022 Planning Commission hearing, by a vote of 7-0 with one Commissioner absent and three Commission seats vacant, that Commission moved to accept the findings and recommendations of staff and moved to recommend approval to the City Commission of the proposed: 1) zone change from AG, Agricultural to LI, Limited Industrial and P/I, Public/Institutional; and 2) **Laverne's Second Addition** subdivision plat as presented; as the proposal complies with the Go2030 Fargo Comprehensive Plan, 2007 Tier 1 Northwest Land Use Plan, Standards of Article 20-06, and Section 20-0906.F (1-4) of the LDC and all other applicable requirements of the LDC." *(NOTE: The Planning Commission does not review the airport proximity agreement)*

Attachments:

1. Zoning Map
2. Location Map
3. Preliminary Plat
4. Airport Proximity Agreement

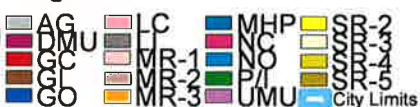
Plat (Major); Zone Change (AG to LI and P/I)

Laverne's Second Addition

4200 32nd Avenue N and 2867 45th Street N



Legend



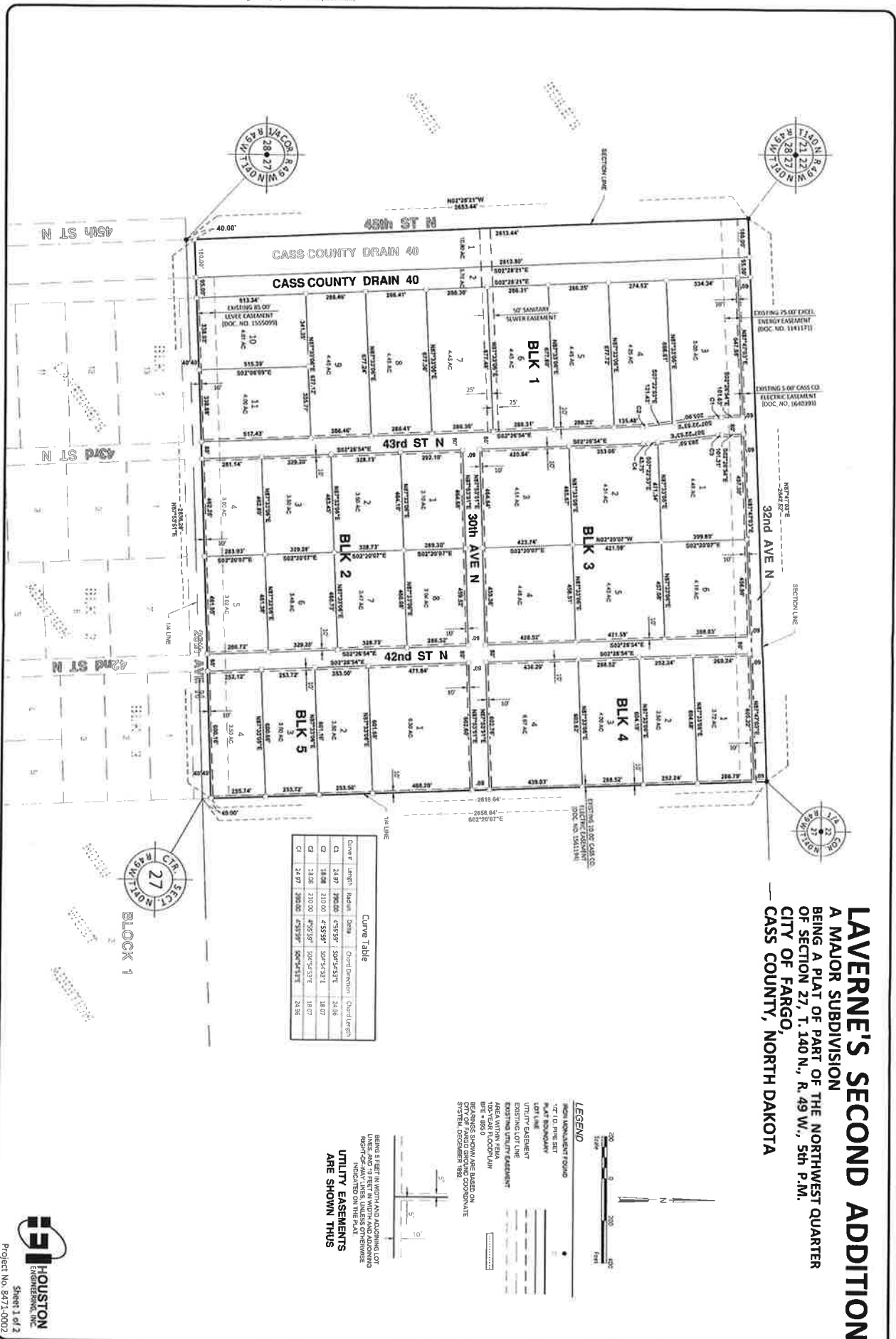
300
Feet

Plat (Major); Zone Change (AG to LI and P/I)

Laverne's Second Addition

4200 32nd Avenue N and 2867 45th Street N





Notary Public



Sheet 2 of 2
Project No. 8471-0002

AGREEMENT

(Proximity of Airport and Noise Attenuation)

THIS AGREEMENT, Made and entered into by and between the **SOUTHEAST CASS WATER RESOURCE DISTRICT** (West 180 feet); **PERRY MONTPLAISIR**, General Partner of Montplaisir Ag and Rental, LLP (undivided 42% interest in entire property, less the West 180 feet); and **PERRY MONTPLAISIR**, Trustee of the Laverne A. Montplaisir Family Trust created by Trust Agreement dated December 28, 2012 (undivided 58% interest in entire property, less the West 180 feet), hereinafter referred to, collectively, as "Owners," and **THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, hereinafter referred to as the "City".

WITNESSETH:

WHEREAS, Owners are the record owners of a tract of land located in Cass County, North Dakota, said tract being more particularly-described hereinafter; and,

WHEREAS, said tract is within the City of Fargo; and,

WHEREAS, Owners will make a development request of the City for a plat; and,

WHEREAS, the Board of City Commissioners of the City of Fargo have approved and enacted a zoning ordinance to effect such change upon the condition that the Owners and Owners' successors in interest be bound to a covenant acknowledging the proximity of Hector International Airport to Owners' property; and,

WHEREAS, Owners are willing to execute and to have recorded an agreement wherein Owners recognize the proximity of said facilities as regards all of the property owned or to be owned by Owners hereinafter described and including all other terms mentioned above; and,

NOW, THEREFORE, In consideration of the mutual covenants and agreements hereinafter set forth, **IT IS HEREBY AGREED** as follows:

1. The subject of this Agreement, and the covenant herein, is the Owners' property, situate in the County of Cass and State of North Dakota, depicted by Exhibit "A" attached hereto and more particularly described as:

All of Laverne's Second Addition, located in part of the Northwest Quarter of Section 27, Township 140 North, Range 49 West to the City of Fargo, County of Cass and State of North Dakota.

[hereinafter referred to as the "Subject Property"]

2. As a condition of City's approval of said platting and zoning, Owners do hereby covenant and agree with the City that said Owners will never institute any suit or action at law or otherwise against the City, nor institute, prosecute or in any way aid in the institution or prosecution of any claim, demand, action or cause of action for damages, costs, loss of service, expenses or compensation for or on account of any damage, loss or injury either to person or property, or both, resulting or which may result by reason of the use of said property in relation to the location and use of Hector International Airport and specifically for damages caused or allegedly caused by the noise of the take-off or landing of jet-propelled or other aircraft from the present runways or any future runways of the present Hector International Airport or for any other noise incidental to the operation of said airport; also from any vibration generated by said aircraft or from any pollutants or contaminants created from such aircraft usage. This provision shall include the Municipal Airport Authority of the City of Fargo, as well as any subsequently formed regional airport authority that may be formed to operate the airport facilities.

3. Montplaisir Ag and Rental, LLP, and Perry Montplaisir, as Trustee of the Laverne A. Montplaisir Family Trust created by Trust Agreement dated December 28, 2012 (collectively, "Montplaisir") agree that they will at all times indemnify City, and hold and save the City harmless from and against any and all actions or causes of actions, claims, demands, liability, loss, damage, or expense of whatsoever kind and nature, including counsel or attorneys fees, which the City shall or may at any time sustain or incur by reason or in consequence of the use of said tract of land for any lawful purposes and specifically for any damages caused or allegedly caused by the noise of the take-off or landing of jet-propelled or other aircraft from the present runway or any future runways of the present Hector International Airport or for any other noise incidental to the operation of said airport, or which the City may sustain or incur in connection with any litigation, investigation or other expenditures incident to such use of said tract, including any suit

instituted to enforce the obligations of this agreement of indemnity, and Montplaisir agrees to pay to City all sums of money, with interest, which the City shall or may pay or cause to be paid, or become liable to pay, on account of or in connection with such lawful use or other use of said tract of land. This provision shall include the Municipal Airport Authority of the City of Fargo, as well as any subsequently formed regional airport authority that may be formed to operate the airport facilities.

4. Owners agree that this agreement may be recorded on the above-described property and specifically agree that the following covenants shall apply to the above-described property:

FAIR DISCLOSURE STATEMENT

Airport -- The tract of land hereby conveyed and legally described lies within the vicinity of Hector International Airport and may be impacted by noise associated with the operations of said airport including noise from the take-off or landing of jet propelled or other aircraft from the present runways or any future runways of the present Hector International Airport or for any other noise incidental to the operation of said airport; or from any vibration generated or from any pollutants or contaminants created from such aircraft usage. The airport normally operates seven days per week throughout the entire year, and is open for flight operation at all hours. The present level of operations will continue and expand for the foreseeable future.

The noise rating of this tract, due to airport operations at the above-named airport according to the Noise Evaluation and Land Use Compatibility Study (1990-91) is above 65 in the Lnd rating system.

The United States Department of Housing and Urban Development (HUD), Circular 1390.2 of 4 August 1971, Subject: Noise Abatement and Control: Departmental Policy, Implementation Responsibilities, and Standards, as well as any subsequent or replacement provisions established the following external noise exposure standards for the new construction of residential and other noise sensitive utilization:

Airport Environs

Land Zone	Site Suitability Classification
Above 75	Clearly unacceptable

	Discretionary:
65-75	Normally unacceptable
<hr/>	
Below 65	Clearly acceptable

These site suitability classifications are further defined by HUD as:

1. Clearly unacceptable: The noise exposure at the site is so severe that construction costs to make the indoor environment acceptable for the performance of activities would be prohibitive. (Residential areas: the outdoor environment would be intolerable for normal residential use.)

2. Normally unacceptable: The noise exposure is significantly more severe so that unusual and costly building constructions are necessary to ensure adequate performance of activities. (Residential areas: barriers must be erected between the site and prominent noise sources to make the outdoor environment tolerable.)

3. Clearly acceptable: The noise exposure is such that the activities associated with the land use may be carried out with essentially no interference from aircraft noise. (Residential areas: both indoor and outdoor noise environments are pleasant.)

Certification

The undersigned owners of said tract of land, certifies that they have read the above statement and acknowledge the preexistence of the airport named above and the right of said airport to continue to operate and also recognize the City of Fargo sewage lagoon existence.

In the event Owners do not include the foregoing statement in the purchase agreement or deed, it shall, nonetheless, constitute a covenant and restriction running with the land and shall bind any future owners to recognition of the herein referenced facts.

5. This Agreement shall be binding upon the heirs, executors, administrators and assigns of the parties hereto and shall constitute a covenant running with the property described hereinbefore.

Dated this ____ day of _____, 2022.

OWNER:
Southeast Cass Water Resource District
(West 180 Feet)

DAN JACOBSON, Chairman

ATTEST:

CAROL HARBEKE LEWIS, Secretary/Treasurer

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this ____ day of _____, 20__, before me, a notary public within and for said county and state, personally appeared **DAN JACOBSON and CAROL HARBEKE LEWIS, known to me to be the CHAIRMAN and SECRETARY/TREASURER, RESPECTIVELY OF THE SOUTHEAST CASS WATER RESOURCE DISTRICT**, to me known to be the person described in and that executed the foregoing instrument, and acknowledged to me that he executed the same.

Notary Public

(S E A L)

(signatures continued on next page)

Dated this ____ day of _____, 2022.

OWNER:

Montplaisir Ag and Rental, LLP
(Undivided 42% Interest in Entire Property, Less
The West 180 Feet)

PERRY MONTPLAISIR, General Partner

OWNER:

LaVerne A. Montplaisir Family Trust Created by
Trust Agreement dated December 28, 2012
(Undivided 58% Interest in Entire Property, Less
The West 180 Feet)

PERRY MONTPLAISIR, Trustee

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this ____ day of _____, 20__, before me, a notary public within and for said county and state, personally appeared **PERRY MONTPLAISIR, GENERAL PARTNER OF MONTPLAISIR AG AND AS TRUSTEE OF THE LAVERNE A. MONTPLAISIR FAMILY TRUST** to me known to be the person described in and that executed the foregoing instrument, and acknowledged to me that he executed the same.

Notary Public

(S E A L)

(signatures continued on next page)

Dated this ____ day of _____, 2022.

THE CITY OF FARGO, NORTH DAKOTA,
a municipal corporation

By: _____
DR. TIMOTHY J. MAHONEY, M.D., Mayor

ATTEST:

STEVEN SPRAGUE, City Auditor

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this ____ day of _____, 20__, before me, a notary public within and for said county and state, personally appeared **DR. TIMOTHY J. MAHONEY, M.D.** and **STEVEN SPRAGUE**, to me known to be the Mayor and City Auditor, respectively, of THE CITY OF FARGO, NORTH DAKOTA, the municipal corporation described in and that executed the foregoing instrument, and acknowledged to me that such municipal corporation executed the same.

Notary Public

(S E A L)

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

2762

AN ORDINANCE REZONING A CERTAIN PARCEL
OF LAND LYING IN LAVERNE'S SECOND ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in Laverne's Second Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on March 1, 2022; and,

WHEREAS, the rezoning changes were approved by the City Commission on May 31, 2022,

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. The following described property:

Block One (1), Lots One (1) through Three (3) of Laverne's Second Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "AG", Agricultural, District to "P/I", Public and Institutional, District.

Section 2. The following described property:

Block One (1), Lots Four (4) through Eleven (11); Block Two (2), Lots One (1) through Eight (8); Block Three (3), Lots One (1) through Six (6); Block Four (4), Lots One (1) through Four (4); and Block Five, Lots One (1) through Four (4) of Laverne's Second Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "AG", Agricultural, District to "L/I", Limited Industrial, District.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 Section 3. The City Auditor is hereby directed to amend the zoning map now on file in his
2 office so as to conform with and carry out the provisions of this ordinance.

3 Section 4. This ordinance shall be in full force and effect from and after its passage and
4 approval.

5
6
7 (SEAL)

Dr. Timothy J. Mahoney, M.D., Mayor

8 Attest:

9
10
11 _____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

27d

City of Fargo Staff Report			
Title:	Christianson 32 nd Avenue South Second Addition	Date:	5/24/2022
Location:	3102 36 th Street South; 3401 32 nd Avenue South	Staff Contact:	Adam Martin, Assistant Planner
Legal Description:	Lot 1, Block 1, Christianson 32 nd Avenue South Addition, and Lot 1, Block 1, Virgil Montplaisir Subdivision		
Owner(s)/Applicant:	Farm Power, Inc.; KLC Holdings, LLC / Christianson Companies	Engineer:	Bolton & Menk
Entitlements Requested:	Zone Change (from GC, General Commercial, and LI, Limited Industrial with a C-O, Conditional Overlay to GC, General Commercial with a C-O, Conditional Overlay); Minor Subdivision (Plat of Christianson 32nd Avenue South Second Addition a replat of Lot 1, Block 1, Christianson 32 nd Avenue South Addition, and Lot 1, Block 1, Virgil Montplaisir Subdivision)		
Status:	City Commission Public Hearing: May 31, 2022		

Existing	Proposed
Land Use: Commercial and Undeveloped	Land Use: Commercial
Zoning: GC, General Commercial and LI, Limited Industrial with a C-O, Conditional Overlay	Zoning: GC, General Commercial with a C-O, Conditional Overlay
<p>Uses Allowed: GC allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self-service storage, vehicle repair, and limited vehicle service.</p> <p>LI allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self-service storage, vehicle repair, limited vehicle service, industrial service, manufacturing and production, warehouse and freight movement, wholesale sales, aviation, surface transportation.</p> <p>Note: Conditional Overlay No. 5015 prohibits certain uses on the LI-zoned lot</p>	<p>Uses Allowed: GC allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self-service storage, vehicle repair, and limited vehicle service.</p> <p>Note: The proposed Conditional Overlay prohibits certain uses.</p>
Maximum Lot Coverage Allowed: 85% for both GC and LI	Maximum Lot Coverage Allowed: 85% for GC

Proposal:

The applicant requests two entitlements:

1. A **zone change** from GC, General Commercial and LI, Limited Industrial with a C-O, Conditional Overlay to GC, General Commercial with a C-O, Conditional Overlay; and
2. A **minor subdivision** to be known as **Christianson 32nd Avenue South Second Addition**, a replat of Lot 1, Block 1, Christianson 32nd Avenue South Addition, and Lot 1, Block 1, Virgil Montplaisir Subdivision

This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: GC, General Commercial, with commercial development, and MR-3, Multi-Dwelling Residential, with multi-dwelling residences.
- East: AG, Agricultural, with multi-residential dwellings, and GC, General Commercial, with office development.
- South: LC, Limited Commercial, with office uses; GC, General Commercial, with vehicle repair uses, and; LI, Limited Industrial, with vehicle repair, limited vehicle service, and retail sales and service uses.
- West: 36th Street and Interstate 29 rights-of-way.

Area Plans:

The subject property is not located within a growth plan area.

Schools and Parks:

Schools: The subject property is located within the Fargo School District, specifically within the Ed Clapp Elementary, Discovery Middle and Davies High schools.

Neighborhood: The subject property is located within the Bluemont Lakes neighborhood.

Parks: Ed Clapp Park, located at 2801 32nd Avenue South, is approximately 0.25 miles east of the subject property, and provides amenities of soccer fields and a playground for ages 5-12.

Pedestrian / Bicycle: Off-road shared-use paths are adjacent to the west and south sides of the subject property, along 36th Street South and 32nd Avenue South, respectively. Both paths are components of the metro area bikeways system.

Transit: MATBUS Route 14 runs along 33rd Street South and 32nd Avenue South. A bus stop is located along 33rd Street South, approximately 200 feet northeast of the subject property. Additionally, MATBUS Route 18 runs along 32nd Avenue South, with its nearest stop located approximately one-eighth of a mile southeast of the subject property, at the southwest corner of 32nd Avenue South and 32nd Street South.

Staff Analysis:

The plat will create four lots zoned GC, General Commercial with a C-O, Conditional Overlay. A City of Fargo-owned property, on which a sanitary sewer lift station is located, separates part of Lot 1, Block 1 from 32nd Avenue South. Although all four lots are adjacent to public rights of way, access to Lots 1 and 3 will be from an access easement running west-east approximately in the center of the plat. This is due to driveway spacing standards in Section 20-0702 of the Land Development Code (LDC), as well as an existing negative access easement along 33rd Street South.

Additionally, as part of redeveloping the property, the existing driveway along 36th Street South into the project site will be closed due to its proximity to the block corner at 32nd Avenue South. After coordinating with the City's traffic engineer, it was determined that any new driveway along 36th Street South will need to be spaced a minimum of 260 feet from the block corner at 32nd Avenue South. Staff has discussed this point with the applicant, and it is anticipated that this driveway spacing requirement will be reflected through an updated access easement on the plat.

Zoning

Section 20-906. F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:

1. Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?

There is no error in the zoning map. The property currently described as Lot 1, Block 1, Virgil Montplaisir Subdivision, was previously rezoned from AG, Agricultural, to C-2, General Commercial (which is now known as GC, General Commercial) in September 1977. Additionally, the property currently described as Lot 1, Block 1, Christianson 32nd Avenue South Addition was previously rezoned from AG, Agricultural to LI, Limited Industrial with a C-O, Conditional Overlay in January 2016. The proposed rezoning of the subject property will bring the entire subdivision into one zoning designation of GC, General Commercial with a C-O, Conditional Overlay. Additionally, the proposed zone change is intended to facilitate the proposed project that redevelops an existing, underutilized commercial site.

Though there is currently no growth plan to guide future land uses for the Bluemont Lakes neighborhood, the GC zoning district is reasonable for the context of the area. However, a conditional overlay (C-O) will be attached to the GC zoning district. This C-O will have site development standards and land use restrictions that are intended to mitigate any potential impacts of commercial development in relation to residentially-zoned property to the north and east of the subject property. Additionally, this C-O is similar to those approved along other commercial corridors within the City of Fargo.

(Criteria Satisfied)

2. **Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?**

Yes. The project site fronts on public rights of way that provide access and utility services.

(Criteria Satisfied)

3. **Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?**

Staff has no documentation or evidence to suggest that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity. Written notice of the proposal was sent to all property owners within 300 feet of the subject property. To date, Planning staff has received no public comment. Staff finds that the approval of the zoning change will not adversely affect the condition or value of the property in the vicinity.

(Criteria Satisfied)

4. **Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?**

The LDC states "This Land Development Code is intended to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo."

The subject property is not covered by a growth plan, area plan, or neighborhood plan.

The project meets some of the goals of infill development stated in the Go2030 Comprehensive Plan:

- the subject property is already served by supporting infrastructure;
- the project includes additional design standards as outlined in the Conditional Overlay, which are commonplace with other development projects along commercial corridors in Fargo; and,
- the project will increase the mix of uses and amenities in the area.

Additionally, by incorporating site design standards into the Conditional Overlay, the project meets some of the goals of active living streets stated in the Go2030 Comprehensive Plan, which identifies 32nd Avenue South as an active living street.

Staff finds this proposal is consistent with the purpose of the LDC, the Go2030 Comprehensive Plan, and other adopted policies of the City.

(Criteria Satisfied)

Minor Subdivision

The LDC stipulates that the following criteria is met before a minor plat can be approved:

1. **Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**

The proposed zoning of GC, General Commercial with a C-O, Conditional Overlay is intended to accommodate the proposed commercial development. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat and zone change have been sent out to property owners within 300 feet of the subject property. To date, Planning staff has received no comments or inquiries. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments.

(Criteria Satisfied)

2. **Section 20-907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**

While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles.

(Criteria Satisfied)

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of Planning Commission and staff and hereby waive the requirement to receive the rezoning Ordinance one week prior to the first reading and place the rezoning Ordinance on for first reading and move to approve to the City Commission of the proposed 1) zoning change from GC, General Commercial and LI, Limited Industrial with a C-O, Conditional Overlay to GC, General Commercial with a C-O, Conditional Overlay, and; 2) a minor subdivision of the **Christianson 32nd Avenue South Second Addition**, as the proposal complies with the Go2030 Fargo Comprehensive Plan, Standards of Article 20-06, and Section 20-0906.F (1-4) of the LDC and all other applicable requirements of the LDC."

Planning Commission Recommendation: April 5, 2022

At the April 5, 2022 Planning Commission hearing, by a vote of 7-0 with one Commissioner absent and three Commission seats vacant, the Planning Commission moved to accept the findings and recommendations of staff and move to recommend approval to the City Commission of the proposed 1) zoning change from GC, General Commercial and LI, Limited Industrial with a C-O, Conditional Overlay to GC, General Commercial with a C-O, Conditional Overlay, and; 2) a minor subdivision of the **Christianson 32nd Avenue South Second Addition**, as the proposal complies with the Go2030 Fargo Comprehensive Plan, Standards of Article 20-06, and Section 20-0906.F (1-4) of the LDC and all other applicable requirements of the LDC.

Attachments:

1. Zoning map
2. Location map
3. Preliminary plat
4. Draft Conditional Overlay

Plat (Minor); Zone Change (GC and LI with a C-O to GC with a C-O)

Christianson 32nd Avenue South Second Addition

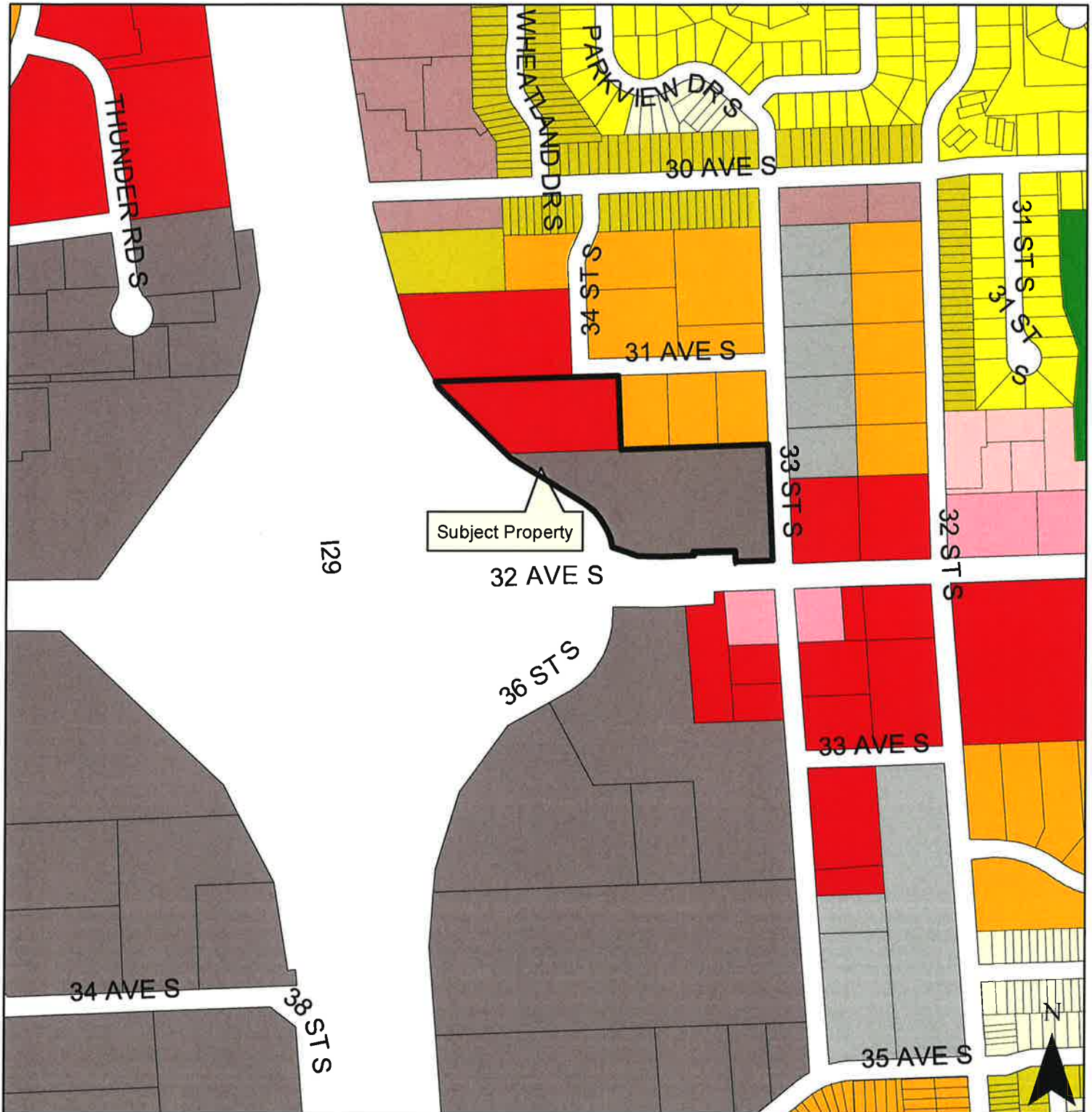
3401 32nd Avenue S
and 3102 36th Street S



Plat (Minor); Zone Change (GC and LI with a C-O to GC with a C-O)

Christianson 32nd Avenue South Second Addition

3401 32nd Avenue S
and 3102 36th Street S



CHRISTIANSON 32ND AVENUE SOUTH SECOND ADDITION

A REPLAT OF LOT 1, BLOCK 1 OF CHRISTIANSON 32ND AVENUE SOUTH ADDITION AND LOT 1, BLOCK 1 OF VIRGIL MONTPLAISIR SUBDIVISION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
(A MINOR SUBDIVISION)

OWNERS DESCRIPTION AND DEDICATION

KNOW ALL MEN BY THESE PRESENTS, that KLC Holdings, LLC, a North Dakota Limited Liability Company, owner, and Bell Bank, mortgagee, of the following described land:

Lot 1, Block 1 of VIRGIL MONTPLAISIR SUBDIVISION according to the recorded plat thereof on file in the office of the County Recorder, Cass County, North Dakota.

AND that C.L. Farm Power, Inc. a North Dakota Corporation, owner of the following described land:

Unit 1, Block 1 of CHRISTIANSON 32ND AVENUE SOUTH ADDITION to the City of Fargo according to the recorded plat thereof on file in the office of the County Recorder, Cass County, North Dakota.

Said parcels contain 11.844 acres of land, more or less and are subject to all easements, restrictions, reservations and rights of way of record, if any.

Said owners have caused the above described parcels of land to be surveyed and platted as "CHRISTIANSON 32ND AVENUE SOUTH SECOND ADDITION" to the City of Fargo, Cass County, North Dakota and the hereby dedicate to lot 1, 2, 3 and 4 the 50 foot wide easement and utility easement as shown on this plat for the purposes so stated and to the City of Fargo, the said parcels of land to be a part of the said addition and to be subject to the same for the purposes so stated.

OWNER:
KLC Holdings, LLC

By: *[Signature]*
Mr. Mike Fritsch, President

State of North Dakota } ss
County of Cass

On this 14th day of April, 2022, before me, a Notary Public within and for said County and State, personally appeared _____, known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same as set forth in the foregoing instrument.

WITNESSETH
Notary Public

MORTGAGE HOLDER:
Bell Bank

By: *[Signature]*
SVP BelBank, Cass County, ND

State of North Dakota } ss
County of Cass

On this 14th day of April, 2022, before me, a Notary Public within and for said County and State, personally appeared _____, known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same as set forth in the foregoing instrument.

WITNESSETH
Notary Public

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT

I, David Strong, Registered Professional Land Surveyor under the laws of the State of North Dakota, do hereby certify that this plat is a correct representation of the survey, that all distances shown are correct, that all bearings are correct, and that the boundaries shown are correctly designated on the plat.



David Strong
State of North Dakota } ss
County of Cass

On this 14th day of April, 2022, before me, a Notary Public within and for said County and State, personally appeared David Strong, Registered Professional Land Surveyor, known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same as set forth in the foregoing instrument.

WITNESSETH
Notary Public

CITY OF FARGO ENGINEERING DEPARTMENT APPROVAL

Approved by City Engineer the _____ day of _____, 2022.

Brent E. Dorn, City Engineer

State of North Dakota } ss
County of Cass

On this 14th day of April, 2022, before me, a Notary Public within and for said County and State, personally appeared Brent E. Dorn, City Engineer, known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same as set forth in the foregoing instrument.

Notary Public

CITY OF FARGO PLANNING COMMISSION APPROVAL

Approved by the City of Fargo Planning Commission this 5th day of April, 2022.

Randy Stronstad, Planning Commission Chair

State of North Dakota } ss
County of Cass

On this 5th day of April, 2022, before me, a Notary Public within and for said County and State, personally appeared Randy Stronstad, Planning Commission Chair, known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same as set forth in the foregoing instrument.

WITNESSETH
Notary Public

FARGO CITY COMMISSION APPROVAL

Approved by the Board of City Commissioners and ordered filed this _____ day of _____, 2022.

Timothy J. Mahoney, Mayor

State of North Dakota } ss
County of Cass

On this 14th day of April, 2022, before me, a Notary Public within and for said County and State, personally appeared Timothy J. Mahoney, Mayor, known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same as set forth in the foregoing instrument.

Notary Public



BOLTON & MENK

A REPLAT OF LOT 1, BLOCK 1 OF CHRISTIANSON 32ND AVENUE SOUTH ADDITION AND LOT 1, BLOCK 1 OF VIRGIL MONTPLAISIR SUBDIVISION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
(A MINOR SUBDIVISION)

[illegible]

WHEELAND AND ASSOCIATES

1. *Phragmites australis* (Cav.) Trin. ex Steud.

139666

2

100

[illegible]

2

2450

2000

100

10

VALLEY ROAD ST
MAY 1960

RECEIVED
FBI
MAY 1960



**BOLTON
& MENK**

SHEET 2 OF 2



A horizontal scale bar with alternating black and white segments, labeled "SCALE IN CM" and "60".

ORIENTATION OF THIS READING SYSTEM
IS PER THE PLAY OF
CHRISTIANSON 1240 AVENUE SOUTH ADDITION

LEGEND

[illegible]

ENCHMABK

CITY OF FARGO MOUNDHOLE BRIDGE LOCATED
MIDWAY BETWEEN 33 STREET S AND 36 STREET SOUTH
ON THE NORTH SIDE OF 33 AVENUE SOUTH
SOUTHEAST FLANGE BOLT OF FIVE HYDRANT
LOCATION FOR ITS MAINTENANCE



Draft Conditional Overlay

1. Building Form and Style

- 1.1. All front building elevations/façades greater than 200 feet in length, measured horizontally from vertical edge to vertical edge, shall incorporate wall plane projections or recesses. Each projection and/or recess shall have a depth of at least two feet, and the cumulative total horizontal width of all projections and/or recesses within a façade shall equate to at least an accumulated total of 20 percent of the overall horizontal length of the façade. No uninterrupted length of any façade shall exceed 200 horizontal feet. Requirements in this subsection shall apply only for views from 32nd Avenue South, 33rd Street South, and 36th Street South.
- 1.2. Ground floor façades that are within 200 feet of the right of way, measured from the exterior wall shall have arcades, display windows, entry areas, awnings, spandrel glass, ground level landscaping, or other such features along no less than 60% of its horizontal length. Requirements in this subsection shall apply only for views from 32nd Avenue South, 33rd Street South, and 36th Street South.
- 1.3. Principal Materials – Unless otherwise deemed acceptable by the Zoning Administrator, all exterior walls shall be constructed or clad with natural stone, synthetic stone, brick, stucco, integrally-colored and textured concrete masonry units or systems, exterior insulation finishing systems (EIFS), fiber cement, architectural metal panels, curtain walls, rainscreen systems or glass. All materials shall be commercial grade, durable, and have a multigenerational life span.
- 1.4. Accent Materials – In conjunction with the principal materials listed above, the following accent materials may also be used to construct or clad exterior walls: finished wood. Accent materials shall be applied to no greater than 20 percent of each building façade.
- 1.5. Loading/unloading areas, building service entrances, loading docks and overhead doors used for shipping/receiving areas, and ground level HVAC units within 150 feet of public right of way shall be visually screened from adjacent public right-of-way and residentially-zoned property by structures and/or landscaping equal to landscaping prescribed in City of Fargo Residential Protection Standards. All structures used for visual screening shall be constructed or clad with the same materials used for the primary building.
- 1.6. Dumpsters and refuse containers shall be located at the side or rear of buildings and shall be visually screened from adjacent public right-of-way, when located within 150 feet of public right of way, by permanent walls. The permanent walls shall be constructed or clad with the same materials used for the primary building. When dumpsters and refuse containers are located in the rear of the building, the enclosure may be constructed of a metal frame and cladding that is complementary to the primary building materials. Dumpsters and refuse containers shall contain permanent walls on at least three sides with the service opening not directly facing any public right-of-way or residentially zoned property. The fourth side shall incorporate a metal gate to visually screen the dumpsters or refuse containers.
- 1.7. Screening of Outdoor Storage Areas
 - 1.7.1. Outdoor storage areas shall not be located within the front setback area of the development.

- 1.7.2. Outdoor storage areas shall not cover more than 50 percent of the open space of the development. For the purposes of determining allowable outdoor storage area, open space shall be defined as outdoor, unenclosed area located on the ground, but not including roads, parking areas, driveways, or other areas intended for vehicular travel.
2. Site Design
 - 2.1. A minimum of 5% of the internal surface area of the parking lot shall be landscaped through the use of planter islands and peninsulas.
 - 2.2. A vegetative buffer equal to landscaping prescribed in City of Fargo Residential Protection Standards shall be installed along the 31st Avenue South right-of-way.
 - 2.3. Separate vehicular and pedestrian circulation systems shall be provided. Adjacent properties may share pedestrian circulation systems that connect to public sidewalks with Zoning Administrator approval. An on-site system of pedestrian walkways shall be provided between building entrances and the following:
 - 2.3.1. Parking lots or parking structures;
 - 2.3.2. Entrances of other buildings on the site;
 - 2.3.3. Any public sidewalk or multi-use path system along the perimeter streets adjacent to the development, or along the perimeter of the lot; and
 - 2.3.4. Adjacent pedestrian origins and destinations—including but not limited to transit stops, residential development, office buildings, and retail shopping buildings— where deemed practical and appropriate by the Zoning Administrator
3. Prohibited Uses
 - 3.1. Group Living
 - 3.2. Adult Entertainment
 - 3.3. Detention facilities
 - 3.4. Self-service storage
 - 3.4.1. Climate controlled indoor storage facilities are permitted
 - 3.5. Aviation/Surface Transportation
 - 3.6. Entertainment Event, Major
 - 3.7. Mining
 - 3.8. Off-Premise Advertising
 - 3.9. Industrial uses
4. Prohibited Signage
 - 4.1. Billboards – a sign advertising products not made, sold, used or served on the premises displaying the sign or that conveys an informational or ideological message.
 - 4.2. Off Premise Sign – a sign directing attention to a business commodity, service, product, or property not located, sold or conducted on the same property or site as that on which the sign is located.
 - 4.3. Portable Sign – any sign designed to be moved easily and not permanently affixed to the ground or to a structure or building.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

27d2

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN CHRISTIANSON 32ND AVENUE SOUTH SECOND ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in Christianson 32nd Avenue South Second Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on April 5, 2022; and,

WHEREAS, the rezoning changes were approved by the City Commission on May 31, 2022,

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. The following described property:

All of Christianson 32nd Avenue South Second Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "GC", General Commercial, District and "LI", Limited Industrial with a "C-O", Conditional Overlay District, as established by Fargo Municipal Ordinance No. 5015, to "GC", General Commercial, District, repealing and replacing the "C-O", Conditional Overlay, District as follows:

1. Building Form and Style.

1.1. All front building elevations/façades greater than 200 feet in length, measured horizontally from vertical edge to vertical edge, shall incorporate wall plane projections or recesses. Each projection and/or recess shall have a depth of at least two (2) feet, and the cumulative total horizontal width of all projections and/or recesses within a façade shall equate to at least an accumulated total of twenty (20) percent of the overall horizontal length of the façade. No uninterrupted length of any façade shall exceed 200

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

horizontal feet. Requirements in this subsection shall apply only for views from 32nd Avenue South, 33rd Street South, and 36th Street South.

1.2. Ground floor façades that are within 200 feet of the right of way, measured from the exterior wall shall have arcades, display windows, entry areas, awnings, spandrel glass, ground level landscaping, or other such features along no less than sixty (60) percent of its horizontal length. Requirements in this subsection shall apply only for views from 32nd Avenue South, 33rd Street South, and 36th Street South.

1.3. Principal Materials. Unless otherwise deemed acceptable by the Zoning Administrator, all exterior walls shall be constructed or clad with natural stone, synthetic stone, brick, stucco, integrally-colored and textured concrete masonry units or systems, exterior insulation finishing systems (EIFS), fiber cement, architectural metal panels, curtain walls, rainscreen systems or glass. All materials shall be commercial grade, durable, and have a multigenerational life span.

1.4. Accent Materials. In conjunction with the principal materials listed above, finished wood may also be used to construct or clad exterior walls. Accent materials shall be applied to no greater than twenty (20) percent of each building façade.

1.5. Loading/unloading areas, building service entrances, loading docks and overhead doors used for shipping/receiving areas, and ground level HVAC units within 150 feet of public right of way shall be visually screened from adjacent public right-of-way and residentially-zoned property by structures and/or landscaping equal to landscaping prescribed in City of Fargo Residential Protection Standards. All structures used for visual screening shall be constructed or clad with the same materials used for the primary building.

1.6. Dumpsters and refuse containers shall be located at the side or rear of buildings and shall be visually screened from adjacent public right-of-way, when located within 150 feet of public right of way, by permanent walls. The permanent walls shall be constructed

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 or clad with the same materials used for the primary building. When dumpsters and
2 refuse containers are located in the rear of the building, the enclosure may be constructed
3 of a metal frame and cladding that is complementary to the primary building materials.
4 Dumpsters and refuse containers shall contain permanent walls on at least three (3) sides
5 with the service opening not directly facing any public right-of-way or residentially
6 zoned property. The fourth side shall incorporate a metal gate to visually screen the
7 dumpsters or refuse containers.

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12 **1.7. Screening of Outdoor Storage Areas.**

13 1.7.1. Outdoor storage areas shall not be located within the front setback area of the
14 development.

15 1.7.2. Outdoor storage areas shall not cover more than fifty (50) percent of the open
16 space of the development. For the purposes of determining allowable outdoor storage
17 area, open space shall be defined as outdoor, unenclosed area located on the ground,
18 but not including roads, parking areas, driveways, or other areas intended for vehicular
19 travel.

20
21
22 **2. Site Design.**

23 2.1. A minimum of five (5) percent of the internal surface area of the parking lot shall be
landscaped through the use of planter islands and peninsulas.

2.2. A vegetative buffer equal to landscaping prescribed in City of Fargo Residential
Protection Standards shall be installed along the 31st Avenue South right-of-way.

2.3. Separate vehicular and pedestrian circulation systems shall be provided. Adjacent
properties may share pedestrian circulation systems that connect to public sidewalks with
Zoning Administrator approval. An on-site system of pedestrian walkways shall be provided
between building entrances and the following:

2.3.1. Parking lots or parking structures;

2.3.2. Entrances of other buildings on the site;

2.3.3. Any public sidewalk or multi-use path system along the perimeter streets
adjacent to the development, or along the perimeter of the lot; and

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

2.3.4. Adjacent pedestrian origins and destinations—including, but not limited to, transit stops, residential development, office buildings, and retail shopping buildings— where deemed practical and appropriate by the Zoning Administrator.

3. The following uses are prohibited:

- 3.1. Group Living;
- 3.2. Adult Entertainment;
- 3.3. Detention facilities;
- 3.4. Self-service storage;
- 3.4.1. Climate controlled indoor storage facilities are permitted;
- 3.5. Aviation/Surface Transportation;
- 3.6. Entertainment Event, Major;
- 3.7. Mining;
- 3.8. Off-Premise Advertising; and
- 3.9. Industrial uses.

4. The following signs are prohibited:

- 4.1. Billboards – a sign advertising products not made, sold, used or served on the premises displaying the sign or that conveys an informational or ideological message.
- 4.2. Off Premise Sign – a sign directing attention to a business commodity, service, product, or property not located, sold or conducted on the same property or site as that on which the sign is located.
- 4.3. Portable Sign – any sign designed to be moved easily and not permanently affixed to the ground or to a structure or building.

Section 2. The City Auditor is hereby directed to amend the zoning map now on file in his office so as to conform with and carry out the provisions of this ordinance.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 3. This ordinance shall be in full force and effect from and after its passage and approval.

(SEAL)

Timothy J. Mahoney, M.D., Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

27e

MEMORANDUM

TO: Board of City Commissioners

From: Donald Kress, Current Planning Coordinator

Date: May 26th, 2022

RE: Annexation by Petition for portion of the Northwest 1/4 of Section 10, T138N, R49W of the 5th Principal Meridian, Cass County, North Dakota

May 31st, 2022 is the date advertised for the presentation to the City Commission of a petition of annexation of a portion of the Northwest 1/4 of Section 10, Township 138 North, Range 49 West.

The petition for annexation was brought forward by the land owner. There are no other property owners within the boundary of the proposed annexation. Advertisements were placed in The Forum and notices were sent by certified mail to Stanley Township and Cass County. Staff has not received any form of protest or concerns from the public.

The property is proposed to be developed as a school. The boundaries of the annexation and corresponding legal description are attached. The proposed development is titled Covey Ranch 2nd Addition.

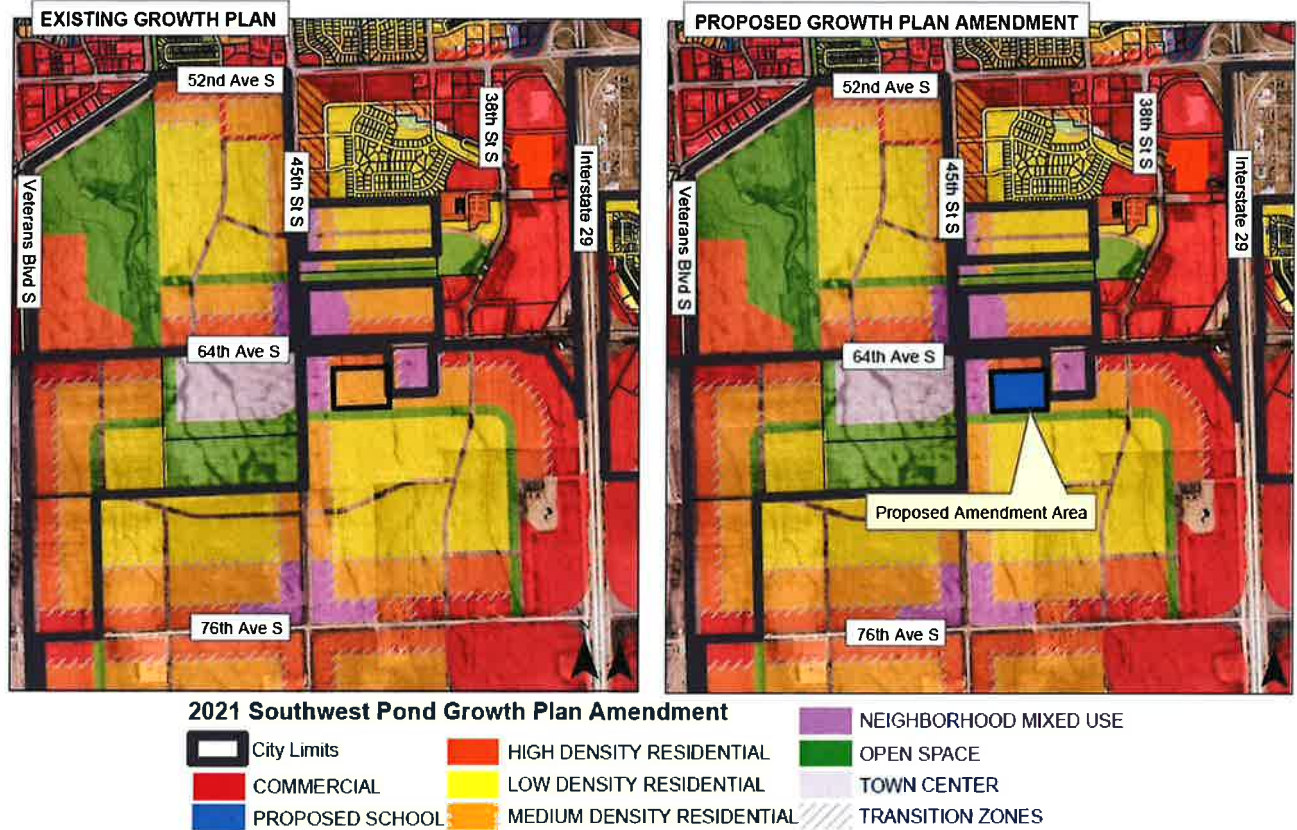
RECOMMENDED MOTION:

To accept the findings and recommendations of staff and the Planning Commission and hereby waive the requirement to receive the Ordinance one week prior to the first reading and place the annexation Ordinance on the first reading, and move to approve the proposed annexation of a portion of the Northwest 1/4 of Section 10, T138N, R49W of the 5th Principal Meridian, Cass County, North Dakota, as depicted in the attached map and legal description.

City of Fargo Staff Report			
Title:	Annexation of a portion of the Northwest 1/4 of Section 10, T138N, R49W of the 5th Principal Meridian, Cass County, North Dakota.	Date: Update:	3/31/2022 5/26/2022
Location:	6688 45 th Street South	Staff Contact:	Donald Kress, Planning Coordinator
Legal Description:	Portion of the Northwest 1/4 of Section 10, T138N, R49W of the 5th Principal Meridian, Cass County, North Dakota (see detailed legal description in attached petition)		
Owner(s)/Applicant:	Dabbert Custom Homes, LLC / Don Dabbert	Engineer:	Moore Engineering
Entitlements Requested:	Annexation by ordinance of a portion of the Northwest 1/4 of Section 10, T138N, R49W of the 5th Principal Meridian, Cass County, North Dakota		
Status:	City Commission Public Hearing May 31 st , 2022		
Existing		Proposed	
Land Use: Undeveloped		Land Use: Educational—K-12 school	
Zoning: AG, Agricultural		Zoning: P/I, Public/Institutional with a C-O, Conditional Overlay; AG	
Uses Allowed: AG – Agricultural. Allows detached houses, parks and open space, safety services, basic utilities, daycare of 12 or fewer children or adults, telecommunications structures, and crop production		Uses Allowed: P/I Allows colleges, community service, daycare centers of unlimited size, detention facilities , health care facilities, parks and open space, religious institutions, safety services, schools, offices, commercial parking , outdoor recreation and entertainment, industrial service, manufacturing and production, warehouse and freight movement, waste related use, agriculture, aviation, surface transportation , and major entertainment events; with a conditional overlay to prohibit certain uses as shown AG –Allows detached houses, parks and open space, safety services, basic utilities, and crop production	
Maximum Density Allowed (Residential): AG allows a maximum of 1 dwelling unit per 10 acres.		Maximum Density Allowed: AG allows a maximum of 1 dwelling unit per 10 acres; P/I has no density standard	
Proposal:			
ANNEXATION: The applicant has petitioned the City to annex approximately 42.04 acres of land that is currently within the city's four-mile extra-territorial jurisdiction. This area is undeveloped. A map of the proposed annexation area is attached.			
CONCURRENT SUBDIVISION, GROWTH PLAN AMENDMENT, AND ZONE CHANGE: The proposed Covey Ranch Second Addition, which includes a subdivision, growth plan amendment, and zone change, will occupy approximately 18.71 acres of the annexation area. The area of this plat will be zone P/I, Public/Institutional, with a conditional overlay, as noted above. This project is the next agenda item on the May 31 st , 2022 City Commission agenda.			

Area Plans:

The subject property is located within the Tier 1 South West area of the 2007 Future Land Use Plan, as amended in 2021. This plan designates the subject property as "Medium Density Residential" and "High Density Residential." The proposed growth plan amendment would designate the subject property as "Proposed School."

**Staff Analysis:**

This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff").

Approximately 18.71 acres of the annexed area is being platted as Covey Ranch Second Addition. It is intended to be developed with a K-12 private school. The entitlements for this development—growth plan amendment, zone change, and major subdivision plat-- are items 9a, b, and c on the April 5th, 2022 Planning Commission agenda. The remaining approximately 23.33 acres will remain undeveloped and zoned AG, Agricultural at this time. The developer is working with City staff to develop a master plan for this area. The details of the master plan relate to the local roadway network, drain crossing locations, and the engineering and drainage details best to serve the remaining land in this section of land. In order to begin the development process for the future school site planning, staff is comfortable with a segment of the quarter section of land being annexed at this time. This consideration is unique to this location based on the close working relationship staff has with abutting landowners and the certainty needed for the school master planning timeline.

OWNERSHIP

The entire property involved in the annexation is owned by the applicant, Dabbert Custom Homes, LLC, Don Dabbert, president. No existing residences or businesses are included in the annexation area.

(continued on next page)

PLAN CONSISTENCY

This property is outside of the Fargo city limits. The applicant has requested annexation through a petition. The proposed annexation area is depicted on the 2007 Tier 1 Southeast Growth Plan map of the 2007 Growth Plan. The 2007 Growth Plan describes the "Tier 1" designation as the "Intended Growth Sector" for the city of Fargo.

Though the 2007 Growth Plan does not provide actual findings for annexation, it does state that "Tier 1 is planned to handle growth for the next 20 to 25 years [from 2007]" and that "Carefully planned extensions of the city as a result of demand for housing help to counter disruptive leapfrog development." (page 55, 2007 Growth Plan). The annexation area is adjacent 64th Avenue South, an arterial street which will be improved in the summer of 2022. The annexation area is adjacent to an area that was annexed for development of the North Dakota State College of Science Career Academy. Property north across 64th Avenue was annexed into the City in 2021. The location of the annexation area corresponds with two of the strategies stated in the 2007 plan to work against leapfrog development:

- Limit roadway and utility extensions to areas within the 20 year service area [Tier 1] directly adjacent to areas currently receiving services; and
- Avoid utility and roadway extensions that traverse areas where property owners are not interested in developing their property. (page 56, 2007 Growth Plan)

At the April 5th, 2022 Planning Commission meeting, that Commission found that the proposed annexation is consistent with the 2007 Growth Plan.

PROCESS

This request for annexation was reviewed by PWPEC at their January 31, 2022 meeting. The Planning Commission evaluated this proposed annexation for consistency with the 2007 Growth Plan at their April 5th 2022 Planning Commission meeting. The Cass County Auditor and the Stanley Township clerk were notified by certified letter of this proposed annexation.

ORDINANCE:

As this annexation is from a petition by the property owner, the City Attorney has prepared an ordinance that is attached to this package. Upon approval of the annexation by the City Commission, staff records the annexation plat and ordinance in the Cass County Recorder's office, and notifies the North Dakota Office of the State Tax Commissioner of the annexation.

Staff Recommendation:

Suggested Motion: To accept the findings and recommendations of staff and the Planning Commission and hereby waive the requirement to receive the Ordinance one week prior to the first reading and place the annexation Ordinance on the first reading, and move to approve the proposed annexation of a portion of the Northwest 1/4 of Section 10, T138N, R49W of the 5th Principal Meridian, Cass County, North Dakota, as depicted in the attached map and legal description.

Planning Commission Recommendation:

On April 5th, 2022, by a vote of 7-0 with one Commissioner absent and three Commission seats vacant, the Planning Commission voted to accept the findings of recommendations of staff and found the proposed annexation of a portion of Southeast Quarter of Section 11, Township 138 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota to be consistent with the 2007 Growth Plan.

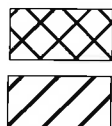
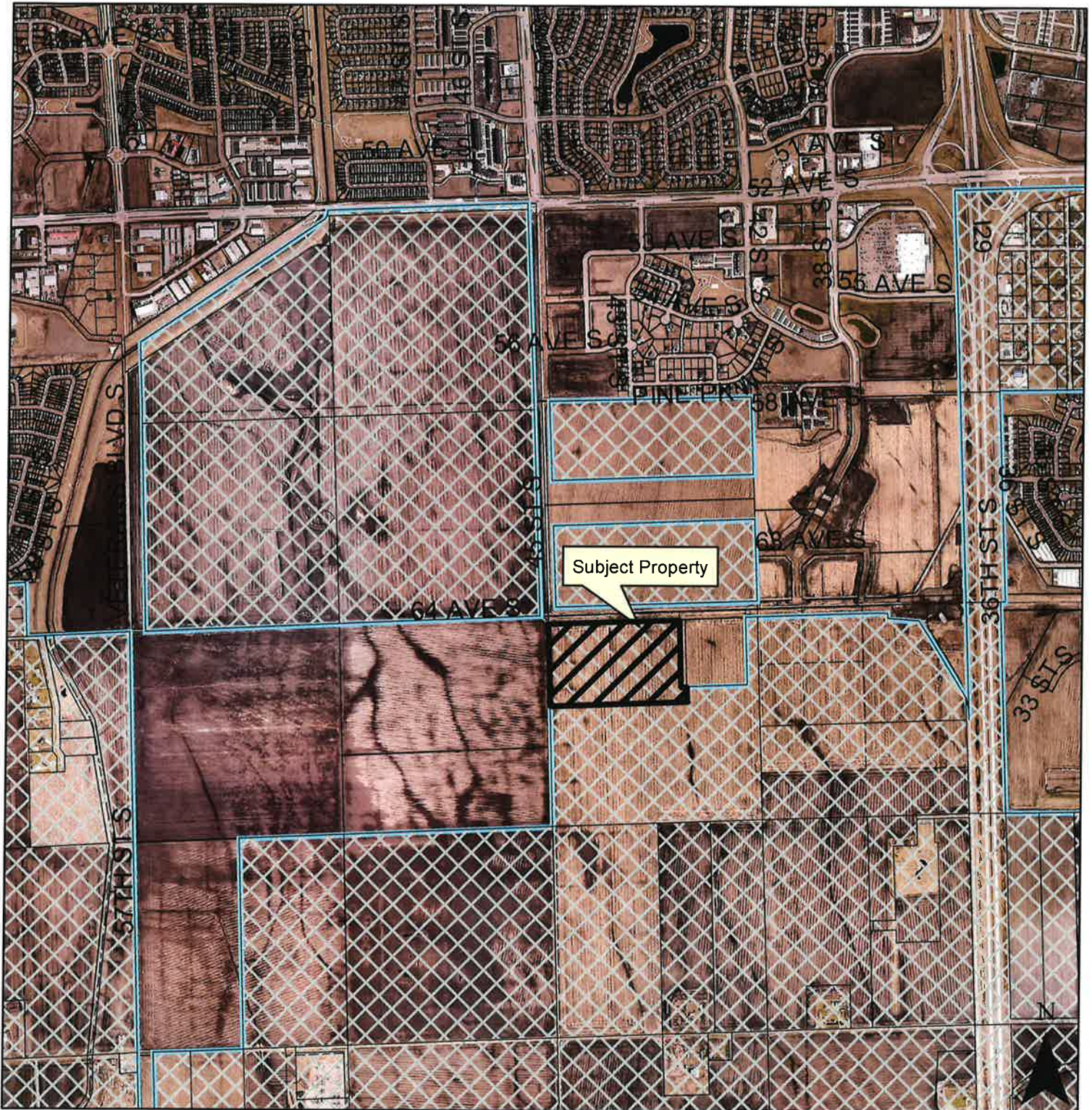
Attachments:

1. Location map
2. Annexation map
3. Annexation petition

Annexation

Portion of NW 1/4 Sec. 10 T138N R49W

6688 45th Street S



Land Outside Fargo City Limits

Proposed Annexation

0.25

Miles



Department of Planning & Development
200 3rd Street North
Fargo, ND 58102
Office: (701) 241-1474
Fax: (701) 241-1526

PETITION FOR ANNEXATION

To: City of Fargo

The undersigned, being the owner of not less than three-fourths in assessed value of the following described property, hereby petitions the City of Fargo to annex said property pursuant to Section 40-51.2-03 NDCC. The following is a description of the property to be annexed:

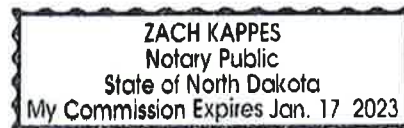
See attached

The undersigned further certifies that Dabbert Custom Homes, LLC is the owner of at least three-fourths in assessed value of the property hereinabove described.

Date this 5th day of April, in the year 2022

Signature [Signature]
President, Dabbert Custom Homes, LLC

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)



On this 5 day of April, in the year 2022, before me, a notary public in and for said County and State, personally appeared Ronald Dabbert Jr., who executed to foregoing instrument, and acknowledged to me that he/she executed the same.

[Signature]
Notary Public
Cass County, North Dakota
My Commission Expires: Jan 17 2023

THAT PART OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA, DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND IRON MONUMENT WHICH DESIGNATES THE SOUTHEAST CORNER OF COVEY RANCH FIRST ADDITION, ACCORDING TO THE RECORDED PLAT THEREOF, ON FILE AND OF RECORD IN THE OFFICE OF THE RECORDER, SAID COUNTY; THENCE SOUTH 87 DEGREES 56 MINUTES 21 SECONDS WEST ON A RECORD BEARING ALONG THE SOUTH LINE OF SAID COVEY RANCH FIRST ADDITION, ALSO BEING THE EXISTING CITY OF FARGO CORPORATE LIMITS, FOR A DISTANCE OF 769.50 FEET TO THE SOUTHWEST CORNER OF LOT 1, BLOCK 1, SAID COVEY RANCH FIRST ADDITION, THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 87 DEGREES 56 MINUTES 21 SECONDS WEST ALONG THE SOUTH LINE OF SAID COVEY RANCH FIRST ADDITION AND CONTINUING ALONG SAID EXISTING CITY OF FARGO CORPORATE LIMITS FOR A DISTANCE OF 70.00 FEET TO THE SOUTHWEST CORNER OF SAID COVEY RANCH FIRST ADDITION; THENCE NORTH 01 DEGREE 52 MINUTES 55 SECONDS WEST ALONG THE WEST LINE OF SAID COVEY RANCH FIRST ADDITION AND CONTINUING ALONG SAID EXISTING CITY OF FARGO CORPORATE LIMITS FOR A DISTANCE OF 849.00 FEET TO A POINT ON A LINE WHICH IS 100.00 FEET SOUTHERLY OF, AS MEASURED AT A RIGHT ANGLE TO AND PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER; THENCE SOUTH 87 DEGREES 56 MINUTES 21 SECONDS WEST ALONG SAID PARALLEL LINE AND CONTINUING ALONG SAID EXISTING CITY OF FARGO CORPORATE LIMITS FOR A DISTANCE OF 1647.10 FEET TO THE WEST LINE OF SAID NORTHWEST QUARTER; THENCE SOUTH 01 DEGREE 42 MINUTES 54 SECONDS EAST ALONG SAID WEST LINE AND CONTINUING ALONG SAID EXISTING CITY OF FARGO CORPORATE LIMITS FOR A DISTANCE OF 1100.02 FEET TO A POINT ON A LINE WHICH IS 1200.00 FEET SOUTHERLY OF, AS MEASURED AT A RIGHT ANGLE TO AND PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER; THENCE NORTH 87 DEGREES 56 MINUTES 21 SECONDS EAST ALONG SAID PARALLEL LINE AND LEAVING SAID EXISTING CITY OF FARGO CORPORATE LIMITS FOR A DISTANCE OF 1720.31 FEET; THENCE NORTH 01 DEGREE 52 MINUTES 55 SECONDS WEST FOR A DISTANCE OF 251.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 42.04 ACRES, MORE OR LESS, AND IS SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD, IF ANY.

I hereby certify that the above description was prepared by me on 4-5-2022 and that I am a duly registered land surveyor under the laws of the state of North Dakota.


Steven W. Holm
North Dakota License No. LS-6571



Modification in any way of the foregoing description terminates liability of the Surveyor.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

27e1

1 AN ORDINANCE ANNEXING A CERTAIN PARCEL OF LAND
2 LYING IN A PORTION OF THE NORTHWEST QUARTER OF
3 SECTION 10, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE 5TH PRINCIPAL
4 MERIDIAN IN CASS COUNTY, NORTH DAKOTA

5 WHEREAS, A Petition for Annexation has been submitted by the owners of not less than
6 three-fourths in assessed value of the property described in said Petition for Annexation to the City
of Fargo, Cass County, North Dakota, in accordance with Section 40-51.2-03 N.D.C.C.; and,

7 WHEREAS, Public notice of the submission of such Petition has been given by publication
8 in The Forum as required by Section 40-51.2-05 N.D.C.C.; and,

9 WHEREAS, Said Section 40-51.2-03 N.D.C.C. requires that such annexation be
accomplished by ordinance,

10 NOW, THEREFORE,

11 Be It Ordained by the Board of City Commissioners of the City of Fargo:

12 Section 1. The following described property located in Section 10, Township 138 North,
13 Range 49 West of the 5th Principal Meridian, Cass County North Dakota, is hereby annexed to the
14 City of Fargo, Cass County, North Dakota:

15 THAT PART OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 138
16 NORTH, RANGE 49 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CASS COUNTY,
NORTH DAKOTA, DESCRIBED AS FOLLOWS:

17 COMMENCING AT A FOUND IRON MONUMENT WHICH DESIGNATES THE
18 SOUTHEAST CORNER OF COVEY RANCH FIRST ADDITION, ACCORDING TO THE
19 RECORDED PLAT THEREOF, ON FILE AND OF RECORD IN THE OFFICE OF THE
20 RECORDER, SAID COUNTY; THENCE SOUTH 87 DEGREES 56 MINUTES 21 SECONDS
21 WEST ON A RECORD BEARING ALONG THE SOUTH LINE OF SAID COVEY RANCH
22 FIRST ADDITION, ALSO BEING THE EXISTING CITY OF FARGO CORPORATE
23 LIMITS, FOR A DISTANCE OF 769.50 FEET TO THE SOUTHWEST CORNER OF LOT 1,
BLOCK 1, SAID COVEY RANCH FIRST ADDITION, THE POINT OF BEGINNING;
THENCE CONTINUING SOUTH 87 DEGREES 56 MINUTES 21 SECONDS WEST ALONG
THE SOUTH LINE OF SAID COVEY RANCH FIRST ADDITION AND CONTINUING

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 ALONG SAID EXISTING CITY OF FARGO CORPORATE LIMITS FOR A DISTANCE OF
2 70.00 FEET TO THE SOUTHWEST CORNER OF SAID COVEY RANCH FIRST
3 ADDITION; THENCE NORTH 01 DEGREE 52 MINUTES 55 SECONDS WEST ALONG
4 THE WEST LINE OF SAID COVEY RANCH FIRST ADDITION AND CONTINUING
5 ALONG SAID EXISTING CITY OF FARGO CORPORATE LIMITS FOR A DISTANCE OF
6 849.00 FEET TO A POINT ON A LINE WHICH IS 100.00 FEET SOUTHERLY OF, AS
7 MEASURED AT A RIGHT ANGLE TO AND PARALLEL WITH THE NORTH LINE OF
8 SAID NORTHWEST QUARTER; THENCE SOUTH 87 DEGREES 56 MINUTES 21
9 SECONDS WEST ALONG SAID PARALLEL LINE AND CONTINUING ALONG SAID
10 EXISTING CITY OF FARGO CORPORATE LIMITS FOR A DISTANCE OF 1647.10 FEET
11 TO THE WEST LINE OF SAID NORTHWEST QUARTER; THENCE SOUTH 01 DEGREE
12 42 MINUTES 54 SECONDS EAST ALONG SAID WEST LINE AND CONTINUING
13 ALONG SAID EXISTING CITY OF FARGO CORPORATE LIMITS FOR A DISTANCE OF
14 1100.02 FEET TO A POINT ON A LINE WHICH IS 1200.00 FEET SOUTHERLY OF, AS
15 MEASURED AT A RIGHT ANGLE TO AND PARALLEL WITH THE NORTH LINE OF
16 SAID NORTHWEST QUARTER; THENCE NORTH 87 DEGREES 56 MINUTES 21
17 SECONDS EAST ALONG SAID PARALLEL LINE AND LEAVING SAID EXISTING CITY
18 OF FARGO CORPORATE LIMITS FOR A DISTANCE OF 1720.31 FEET; THENCE NORTH
19 01 DEGREE 52 MINUTES 55 SECONDS WEST FOR A DISTANCE OF 251.00 FEET TO
20 THE POINT OF BEGINNING.

21 Said tract contains 42.04 acres, more or less.

22 Section 2. Effective Date.

23 This ordinance shall be in full force and effect from and after its passage and approval.

CITY OF FARGO

By _____
Dr. Timothy J. Mahoney, M.D., Mayor

(SEAL)

ATTEST:

First Reading:
Second Reading:
Final Passage:

Steven Sprague, City Auditor

274

City of Fargo Staff Report			
Title:	Covey Ranch Second Addition	Date:	3/30/22
		Update:	5/26/2022
Location:	6688 45 th Street South	Staff Contact:	Donald Kress, current planning coordinator
Legal Description:	Portion of the NW 1/4 of Sec. 10, T138N, R49W		
Owner(s)/Applicant:	Dabbert Custom Homes/Don Dabbert	Engineer:	Moore Engineering
Entitlements Requested:	Major Subdivision (Plat of Covey Ranch Second Addition , a plat of a portion of the NW 1/4 of Sec. 10, T138N, R49W) a Zoning Change (from AG, Agricultural to P/I, Public and Institutional, with a conditional overlay (C-O)); and a Growth Plan Amendment from "Medium Density Residential" and "High Density Residential" to "Proposed School"		
Status:	City Commission Public Hearing: May 31st, 2022		

Existing	Proposed
Land Use: Undeveloped	Land Use: Educational—K-12 school
Zoning: AG, Agricultural	Zoning: P/I, Public/Institutional with a C-O, Conditional Overlay; AG
Uses Allowed: AG – Agricultural. Allows detached houses, parks and open space, safety services, basic utilities, daycares of 12 or fewer children or adults, telecommunications structures, and crop production	Uses Allowed: P/I Allows colleges, community service, daycare centers of unlimited size, detention facilities , health care facilities, parks and open space, religious institutions, safety services, schools, offices , commercial parking , outdoor recreation and entertainment, industrial service , manufacturing and production , warehouse and freight movement , waste related use , agriculture , aviation , surface transportation , basic utilities, telecommunications structures, and major entertainment events; with a conditional overlay to prohibit certain uses as shown
Maximum Density Allowed (Residential): AG allows a maximum of 1 dwelling unit per 10 acres.	Maximum Density Allowed: P/I has no density standard

Proposal:

The applicant requests two entitlements:

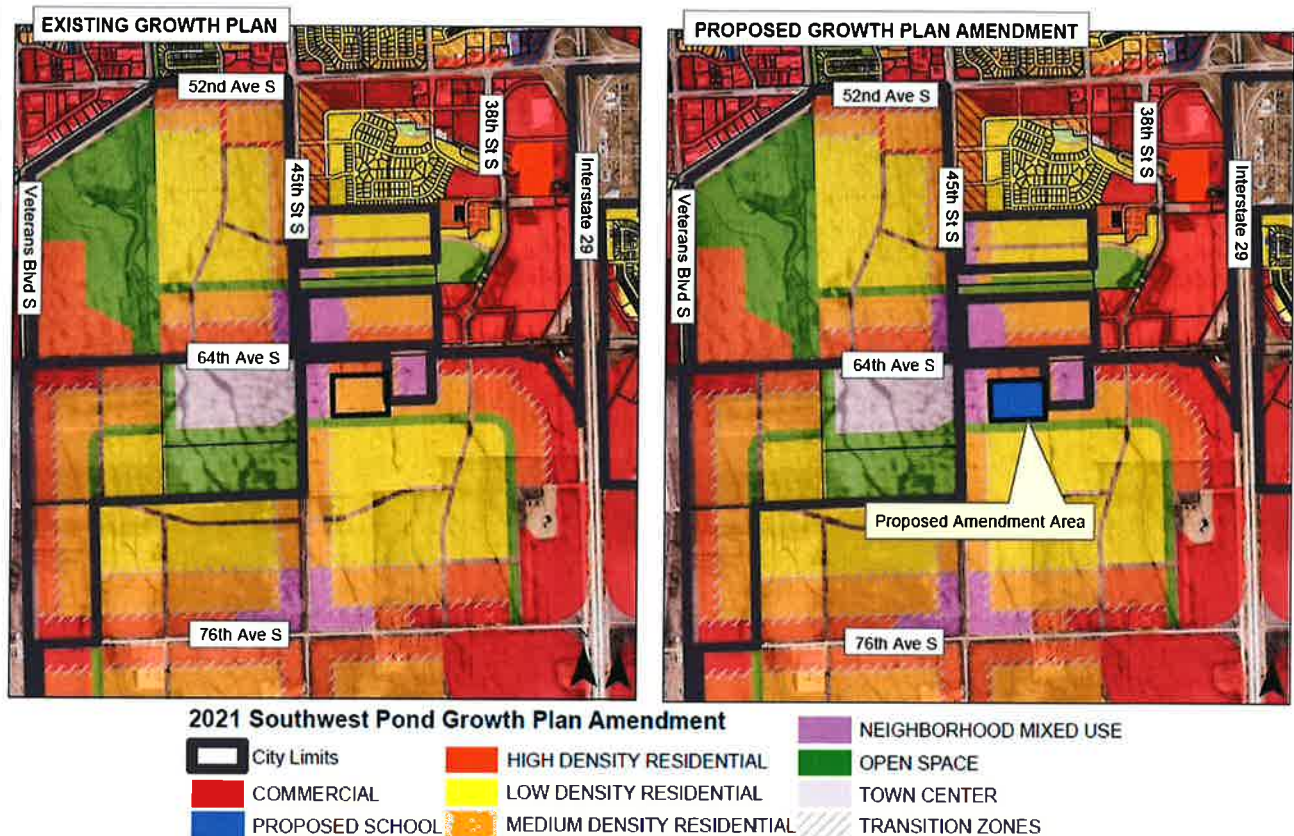
1. A major subdivision, entitled **Covey Ranch Second Addition**, which is a plat of a portion of the NW 1/4 of Sec. 10, T138N, R49W
2. A zoning change from AG, Agricultural, to P/I, Public and Institutional, with a conditional overlay (C-O)
3. A growth plan amendment from "Medium Density Residential" and "High Density Residential" to "Proposed School"

This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: AG, Agricultural; undeveloped;
- East: P/I, future North Dakota State College of Science Career Workforce Academy;
- South: AG, Agricultural; undeveloped; in Fargo's four-mile extra-territorial jurisdiction.
- West: AG, Agricultural; undeveloped; in Fargo's four-mile extra-territorial jurisdiction.

The subject property is located within the Tier 1 South West area of the 2007 Future Land Use Plan, as amended in 2021. This plan designates the subject property as "Medium Density Residential" and "High Density Residential." The proposed growth plan amendment would designate the subject property as "Proposed School."



Schools and Parks:

Schools: The subject property is located within the Fargo School District, specifically within the Kennedy Elementary, Discovery Middle and Davies High schools.

Neighborhood: The subject property is not located in a designated neighborhood.

Parks: There are no parks in the immediate vicinity of the subject property. However, the Fargo Parks sports complex is proposed to be developed on the north side of 64th Avenue South approximately one-half mile from the subject property.

Pedestrian / Bicycle: There are no bicycle or pedestrian facilities near the subject property at this time. The property fronts on 64th Avenue South, which will have 10-foot wide shared use paths on both sides once it is completed.

MATBUS Route: The subject property is not on a MATBUS route at this time.

Staff Analysis:

PLAT AND ZONING CHANGE

The plat creates two lots in one block, intended for development of the Capstone Classical Academy, a private school serving pre-K through 12th grade. The plat includes a dedication for 43rd Street South. Both lots are proposed to be zoned P/I, Public/Institutional, which is the appropriate zoning for this educational institution.

CONDITIONAL OVERLAY: The P/I zoning includes a conditional overlay. This overlay prohibits certain uses that would be allowed in the P/I, as these uses would be out of character with the neighborhood expected to develop in this area. A draft of this overlay is attached.

ACCESS: The project site takes access from 43rd Street South. Future access from the east and north is intended to be provided when adjacent properties are platted.

PUBLIC WATER and SEWER: Public water and sewer will be provided in the dedicated public street.

CONCURRENT ANNEXATION: The annexation of an approximately 42.02 acre portion of Fargo's four-mile extra-territorial jurisdiction, which includes the area of this subdivision, appeared as the previous agenda item on the May 31st, 2022 City Commission agenda.

GROWTH PLAN AMENDMENT: The proposed growth plan amendment would change the future land use designation on the subject from "Medium Density Residential" and "High Density Residential" to "Proposed School." Specific findings for the growth plan amendment are below.

GROWTH PLAN MEETING: Pursuant to the requirements of LDC Section 20-0905.E, a growth plan open house was held at city hall on Monday, March 28, 2022. The applicant and Planning staff attended. There were no other attendees.

Growth Plan Evaluation Criteria: Section 20-0905(H) of the LDC states that the Planning Commission and City Commission shall consider whether the Growth Plan is consistent with and serves to implement adopted plans and policies of the city.

The 2007 Growth Plan sets forth the following criteria that should be used to evaluate any proposed growth plan amendment:

1. Is the proposed change consistent with surrounding land uses, both existing and future?
Staff was aware of interest in developing schools in this area, but no specific area had been selected by the Fargo Public School District (east of 45th Street South), West Fargo Public School District (west of 45th Street South), or private school operators at the time the 2007 Growth Plan for this area was amended in 2021. Now that a location has been selected for a school, Planning staff felt it was appropriate amend the growth plan to identify this location as "Proposed School" and use the growth plan amendment process, which includes public notice and a public open house meeting, to analyze the proposed school in its context. Staff finds that the proposed change is consistent with existing and future surrounding land uses, which are neighborhood mixed use, education, residential, and future drainage right of way. **(Criteria Satisfied)**

2. Does the proposed change involve a street alignment or connection? If so, how does this change affect the transportation system and the land uses in the surrounding area, both existing and future.
The right of way dedication depicted on the plat will widen the previously dedicated right of way for 43rd Street South to 80 feet and extend the this right of way to front the full length of the lots platted with this subdivision. **(Criteria Satisfied)**

3. How does the proposed change work with the larger area in terms of land use balance and other factors that could influence the proposed change? Are there physical features or developments in the vicinity that make the change positive or negative for the City and the area in general?
The proposed growth plan amendment is not a drastic change from the current land use designations on the subject property, but rather a refinement of the plan to identify an area intended for a school. Schools are integral to the development of this area south of 64th Avenue South, a large part of which is designated for future residential development. Though only one area was designated south of 64th Avenue South as "Proposed School" on the original 2007 Growth Plan, it is expected that several schools will develop in this area over time. The area south of 64th Avenue and east of 45th Street is in the Fargo Public School district, while the area south of 64th Avenue and west of 45th Street is in the West Fargo Public School District. The private school intended for the subject property, plus future public schools, will provide a variety of educational options. **(Criteria Satisfied)**

4. How does the proposed change impact the long term sustainability of the city? Does the change contribute to or detract from the walkability and livability of the city?

The proposed change will enable an education option for grades K through 12. A school developed here would be within walking distance of much of the surrounding area that is designated for single-dwelling or multi-dwelling residential use, though a private school could draw students from across the city as well as the immediate neighborhood. **(Criteria Satisfied)**

Zoning

Section 20-0906. F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:

1. Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?

Staff is unaware of any error in the zoning map as it relates to this property. The property is currently zoned AG: Agricultural. In order to be developed, the property has to be annexed, platted, and zoned (see "Concurrent Annexation" above). Now that development is proposed, the applicant requests a zoning change to P/I, Public and Institutional, which is the appropriate zone for a school. **(Criteria Satisfied)**

2. Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?

City staff and other applicable review agencies have reviewed this proposal. Staff finds no deficiencies in the ability to provide all of the necessary services to the site. The subject property fronts on an existing public right-of-way. Additional dedications will widen the right of way and extend it the full length of the proposed lots. **(Criteria satisfied)**

3. Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?

Staff has no documentation or evidence to suggest that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity. Written notice of the proposal was sent to all property owners within 300 feet of the subject property. To date, Planning staff has received and responded to one inquiry. Staff finds that the approval of the zoning change will not adversely affect the condition or value of the property in the vicinity. **(Criteria satisfied)**

4. Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?

The LDC states "This Land Development Code is intended to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo." The Growth Plan that applies to this property is the 2007 Growth Plan as amended in 2021. The proposed amendment to the growth to designate the subject property as "Proposed School" is consistent with the proposed development and proposed zoning of P/I. Staff finds this proposal is consistent with the purpose of the LDC, the applicable growth plan, and other adopted policies of the City, contingent on Commission approval of the proposed Growth Plan Amendment. **(Criteria satisfied)**

Major Subdivision

The LDC stipulates that the following criteria is met before a major subdivision plat can be approved

1. Section 20-0907 of the LDC stipulates that no major subdivision plat application will be accepted for land that is not consistent with an approved Growth Plan or zoned to accommodate the proposed development.

The requested zoning for the residential development on this property is P/I, Public/Institutional. The P/I zone is the appropriate designation for an educational institution. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, Planning staff has received and responded to one inquiry. **(Criteria Satisfied)**

2. **Section 20-0907.4 of the LDC further stipulates that the Planning Commission shall recommend approval or denial of the application and the City Commission shall act to approve or deny, based on whether it is located in a zoning district that allows the proposed development, complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**

The property is proposed to be zoned P/I, Public and Institutional. As noted in the zone change findings above, this zone is consistent with the proposed growth plan amendment to designate the land use for the subject property as "Proposed School." The P/I zone is the appropriate designation for an educational institution. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments. **(Criteria Satisfied)**

3. **Section 20-907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**

The applicant has provided a draft amenities plan that specifies the terms or securing installation of public improvements to serve the subdivision. This amenities plan has been reviewed by the Public Works Project Evaluation Committee (PWPEC). Any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles. **(Criteria Satisfied)**

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and hereby waive the requirement to receive the rezoning Ordinance one week prior to the first reading and place the rezoning Ordinance on for first reading and move to approve the proposed 1) growth plan amendment from "Medium Density Residential" and "High Density Residential" to "Proposed School"; 2) Zoning Change from AG, Agricultural to P/I, Public and Institutional, with a conditional overlay (C-O), and 3) a plat of the **Covey Ranch Second Addition**, as the proposal complies with the Go2030 Fargo Comprehensive Plan, 2007 Growth Plan, Standards of Article 20-06, Section 20-0905.H, 20-0907, and Section 20-0906.F (1-4) of the LDC and all other applicable requirements of the LDC."

Planning Commission Recommendation: April 5, 2022

At the April 5th, 2022 Planning Commission hearing, by a vote of 6-1 with one Commissioner absent and three Commission seats vacant, that Commission moved to accept the findings and recommendations of staff and moved to recommend approval to the City Commission of the proposed 1) growth plan amendment from "Medium Density Residential" and "High Density Residential" to "Proposed School"; 2) Zoning Change from AG, Agricultural to P/I, Public and Institutional, with a conditional overlay (C-O), and 3) a plat of the **Covey Ranch Second Addition**, as the proposal complies with the Go2030 Fargo Comprehensive Plan, 2007 Growth Plan, Standards of Article 20-06, Section 20-0905.H, 20-0907, and Section 20-0906.F (1-4) of the LDC and all other applicable requirements of the LDC.

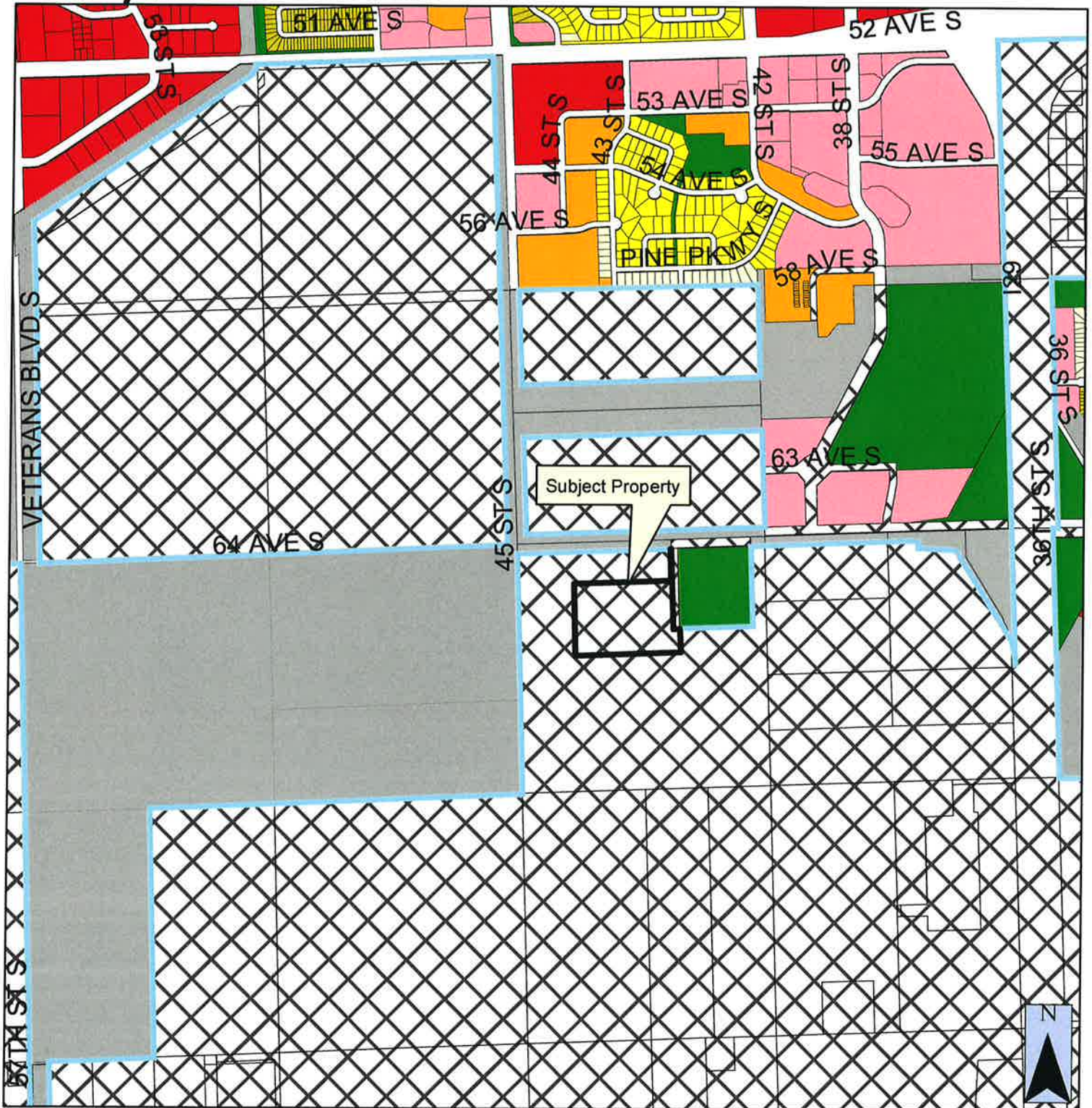
Attachments:

1. Zoning map
2. Location map
3. Growth Plan map
4. Preliminary plat
5. Draft conditional overlay

Plat (Major); Zone Change (AG to P/I); Growth Plan Amendment

Covey Ranch 2nd Addition

6688 45th Street S



Legend



0.25

Miles

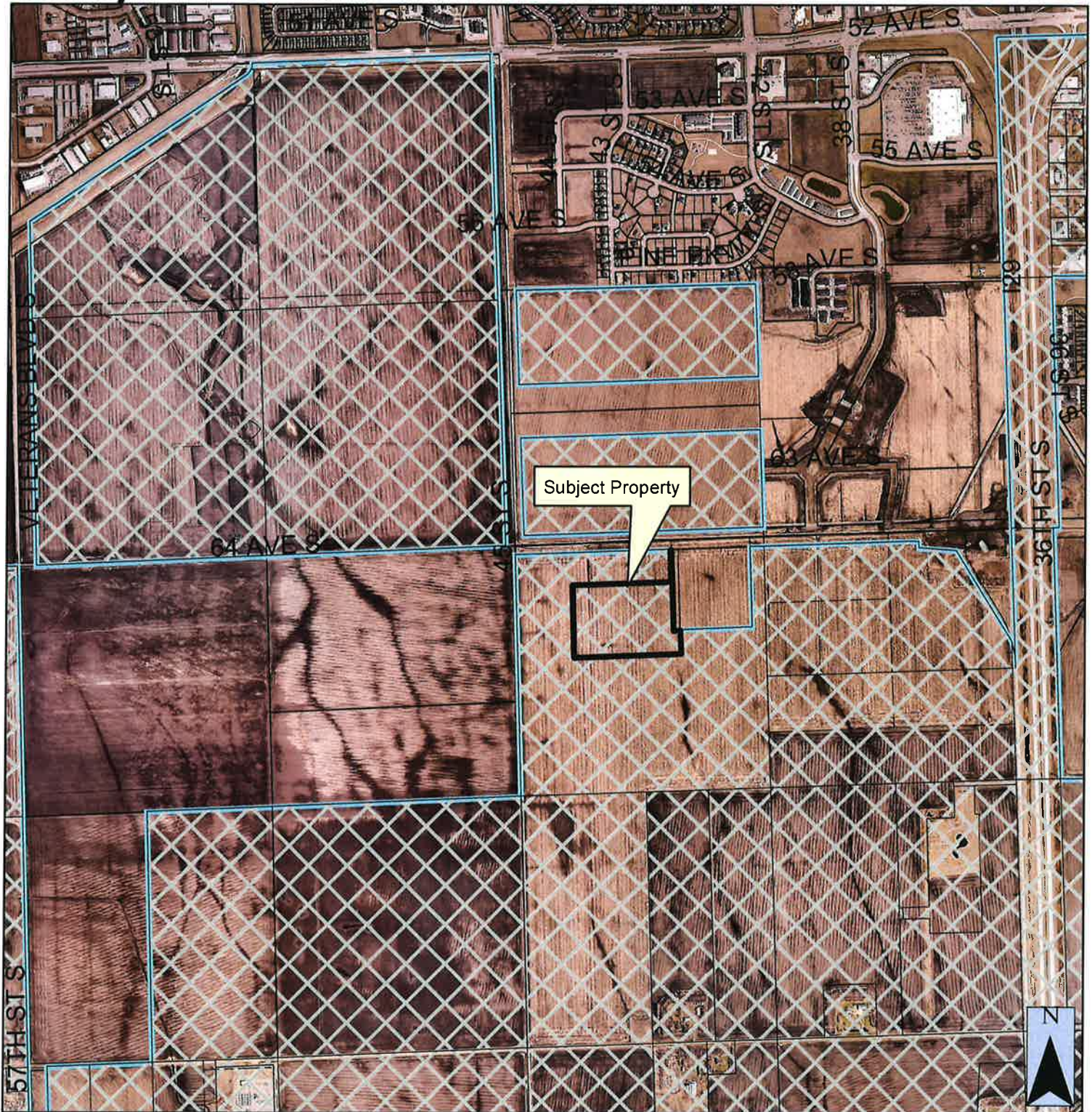
Fargo Planning Commission

April 5, 2022

Plat (Major); Zone Change (AG to P/I); Growth Plan Amendment

Covey Ranch 2nd Addition

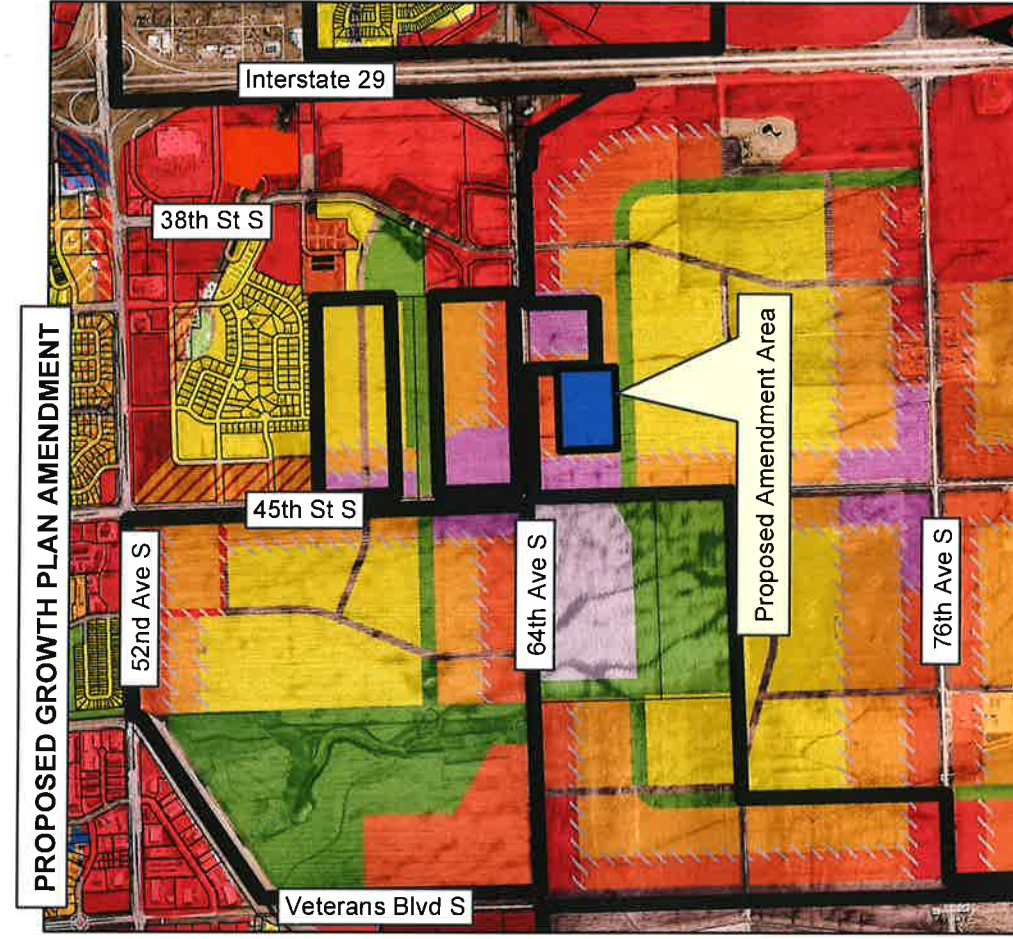
6688 45th Street S



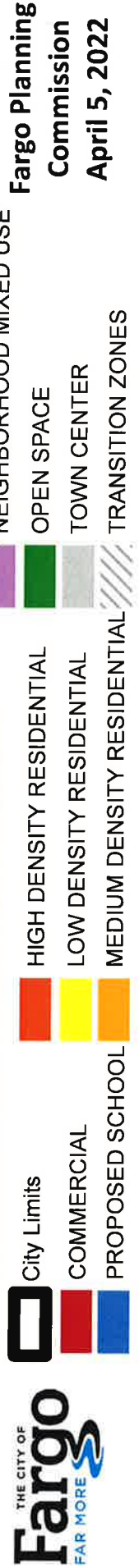
Growth Plan Amendment (Medium & High Density Residential to Proposed School)

Covey Ranch 2nd Addition

6688 45th Street South



2021 Southwest Pond Growth Plan Amendment



DRAFT CONDITIONAL OVERLAY

March 30, 2022

Lot 1 and 2, Block 1, Covey Ranch Second Addition

The following uses in the P/I, Public/Institutional zone are prohibited on Lots 1 and 2, Block 1, Covey Ranch Second Addition:

- a) Detention facilities
- b) Commercial parking
- c) Industrial service
- d) Manufacturing and production
- e) Warehouse and freight movement
- f) Waste related uses
- g) Agriculture
- h) Aviation
- i) Surface transportation

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

2743

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN COVEY RANCH SECOND ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in Covey Ranch Second Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on April 5, 2022; and,

WHEREAS, the rezoning changes were approved by the City Commission on May 31, 2022,

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. The following described property:

Lots One (1) and Two (2), Block One (1) of Covey Ranch Second Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "AG", Agricultural, District to "P/I", Public and Institutional, District with a "C-O", Conditional Overlay, District as follows:

The following uses are prohibited:

- a) Detention facilities;
- b) Commercial parking;
- c) Industrial service;
- d) Manufacturing and production;
- e) Warehouse and freight movement;
- f) Waste related uses;

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

- g) Agriculture;
- h) Aviation; and
- i) Surface transportation.

Section 2. The City Auditor is hereby directed to amend the zoning map now on file in his office so as to conform with and carry out the provisions of this ordinance.

Section 3. This ordinance shall be in full force and effect from and after its passage and approval.

Timothy J. Mahoney, M.D., Mayor

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

279

City of Fargo Staff Report			
Title:	Westrac Third Addition	Date:	1/26/2022 5/26/2022
Location:	3315 and 3361 Westrac Drive South	Staff Contact:	Donald Kress, planning coordinator
Legal Description:	Lot 1, Block 1, Cedar Crest First Addition and a plat of a portion of the Southwest Quarter of Section 11, Township 139 North, Range 49 West		
Owner(s)/Applicant:	JWPT LLC; SoFar Properties, LLP; Prairie Ridge 4, LLLP / MBN Engineering	Engineer:	MBN Engineering; KPH, Inc.
Entitlements Requested:	Zoning Change (from GC, General Commercial with a Planned Unit Development (PUD) and AG, Agricultural to GC, General Commercial with a Planned Unit Development (PUD); LI, Limited Industrial; and LI, Limited Industrial with a C-O, Conditional Overlay); Major Subdivision (plat of Westrac Third Addition , a replat of Lot 1, Block 1, Cedar Crest First Addition and a plat of a portion of the Southwest Quarter of Section 11, Township 139 North, Range 49 West)		
Status:	City Commission Public Hearing: May 31st, 2022		
Existing		Proposed	
Land Use: Undeveloped		Land Use: Affordable independent senior living facility; industrial	
Zoning: GC, General Commercial with a PUD, Planned Unit Development; AG, Agricultural		Zoning: GC, General Commercial with a PUD, Planned Unit Development; LI, Limited Industrial with a C-O, Conditional overlay	
Uses Allowed: GC – General Commercial. Allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self storage, vehicle repair, limited vehicle service, basic utilities, telecommunications structures PUD also allows household living AG – Agricultural. Allows detached houses, parks and open space, safety services, basic utilities, telecommunications structures, daycares of 12 or fewer children or adults, and crop production.		Uses Allowed: GC with the PUD: no change in uses LI – Limited Industrial. Allows colleges, community service, daycare centers of unlimited size, detention facilities , health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers , offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self storage, vehicle repair, limited vehicle service, industrial service, manufacturing and production, warehouse and freight movement, basic utilities, telecommunications structures, wholesale sales, aviation, surface transportation . with conditional overlay to prohibit certain uses as noted above and provides site design guidelines.	
Maximum Density Allowed: AG: 1 dwelling unit per 10 acres. GC with PUD allows a density of 38 units per acre		Maximum Building Coverage Allowed: 85% in LI. Maximum Density Allowed: GC with PUD allows a density of 38 units per acre	

Proposal:

The applicant requests two entitlements:

1. A **zoning change** GC, General Commercial with a PUD, Planned Unit Development; AG, Agricultural to GC, General Commercial with a PUD, Planned Unit Development; LI, Limited Industrial; and LI, Limited Industrial with a C-O, Conditional overlay; and
2. A **major subdivision** to be known as **Westrac Third Addition**, a replat of a replat of Lot 1, Block 1, Cedar Crest First Addition and a plat of a portion of the Southwest Quarter of Section 11, Township 139 North, Range 49 West

This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: LI, Limited Industrial; undeveloped and Cass County jail
- East: AG; undeveloped and City-owned drainage facility
- South: GC with commercial uses
- West: LI; undeveloped and industrial uses

Area Plans:

The subject property is not located within a growth plan, area plan, or neighborhood plan area.

Context:

Schools: The subject property is located within the Fargo School District, specifically within the Jefferson Elementary, Carl Ben Eielson Middle and South High schools.

Neighborhood: The subject property is located within the Westgate neighborhood.

Parks: Metro Rec Center, located at 3110 Main Avenue, is approximately 0.75 miles northeast of the subject property and provides amenities of indoor turf year round making it a very versatile facility. The space is great for soccer, football, lacrosse, tag and golf putting.

Pedestrian / Bicycle: No bicycle or pedestrian trails are adjacent to the subject property.

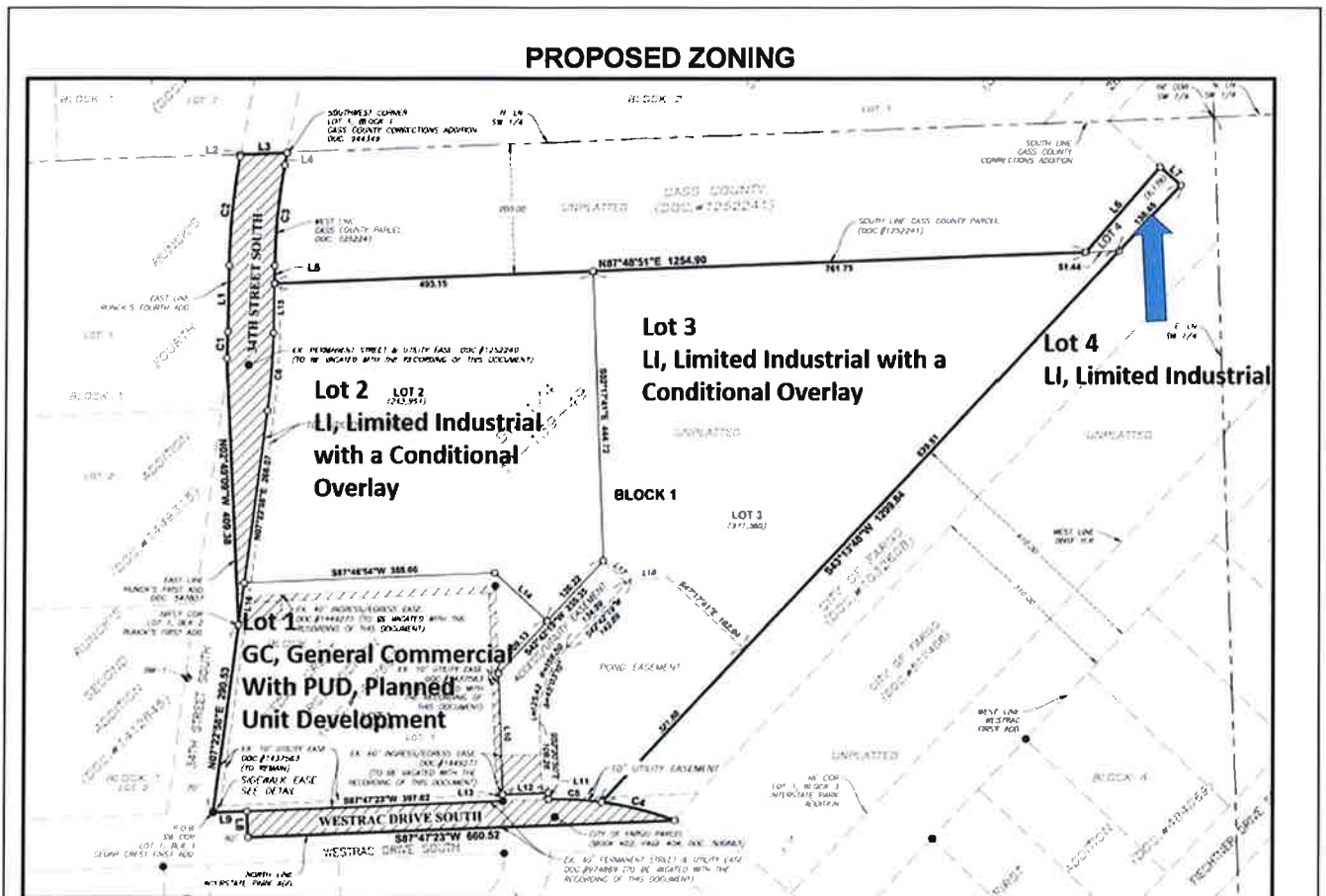
Bus Route: The subject property is a stop on MATBUS Route 20. The stop is located on the north side of Westrac Drive just east of 34th Street South.

Staff Analysis:PLAT AND ZONING

The minor subdivision plat creates four lots in one block, zoned as shown in the chart and graphic below:

LOT NUMBER	BLOCK NUMBER	CURRENT ZONING	PROPOSED ZONING
1	1	GC, General Commercial with a planned unit development, PUD	GC, General Commercial with a planned unit development, PUD
2	1	AG, Agricultural	LI, Limited Industrial with Conditional Overlay
3	1	AG, Agricultural	LI, Limited Industrial with Conditional Overlay I
4	1	AG, Agricultural	LI, Limited Industrial

(continued on next page)



Lot 1 continues the current zoning of Lot 1, Block 1, Cedar Crest Addition of GC, General Commercial with a PUD, planned unit development for a senior residential project that was approved October 5, 2020. This plat makes that lot slightly larger, but the scope of the PUD will not change and the timeline of the PUD will not change.

Lots 2 and 3 are to be zoned LI, Limited Industrial, with a conditional overlay which limits uses on these lots and provides site design standards intended to mitigate the impacts of any industrial uses in relation to the development on Lot 1. A copy of the conditional overlay is attached.

Lot 4, as shown on the graphic above, is the “panhandle” of the subject property. This lot is created to resolve what appears to be an existing surveying error. This lot will be conveyed to Cass County, who owns the property adjacent to the west of Lot 4, and is intended to be combined with that adjacent property, though that combination is not part of this plat. Lot 4 will be zoned LI to match the zoning of the adjacent Cass County property.

ACCESS AND UTILITY EASEMENT

The access and utility easement (private drive) is intended to provide access to Lot 2 and 3. Lot 1 is intended to take access from the adjacent public streets. Lot 2 may also take access from the adjacent public streets.

RIGHT OF WAY DEDICATIONS

The plat dedicates existing easements for 34th Street South and Westrac Drive as right of way. This dedication is to “clean up” these easements and does not create any new rights of way. The street paving and public utilities in these streets have already been installed.

(continued on next page)

Zoning --- Section 20-906. F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:

1. **Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?**

There is no error in the zoning map. This plat brings together two properties. One property is Lot 1, Block 1, Cedar Crest First Addition, which is currently zoned GC, General Commercial. In October, 2020, a planned unit development (PUD) overlay was approved to allow the development of an affordable senior citizen residence. This property, along with some additional area purchased from the adjacent property, will become Lot 1 of the proposed plat. The other property is a portion of the Southwest Quarter of Section 11, Township 139 North, Range 49 West. This property is zoned AG, Agricultural and is not developed. This property will become Lots 2, 3, and 4 of the proposed plat. These lots are proposed to be zoned LI, Limited Industrial. Though there is no area or neighborhood plat to guide future land uses for this area, the LI zoning is reasonable for the context of this area. However, a conditional overlay (C-O) will be attached to the LI zoning. This C-O will have site development standards and land use restrictions that are intended to mitigate any potential impacts of industrial development on Lots 2 and 3 in relation to the proposed residential development on Lot 1. Lot 4 will be zoned LI, Limited Industrial without the conditional overlay, as noted above.

(Criteria Satisfied)

2. **Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?**

Yes. The project site fronts on public rights of way that provide access and utility services.

(Criteria Satisfied)

3. **Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?**

Staff has no documentation or evidence to suggest that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity. Written notice of the proposal was sent to all property owners within 300 feet of the subject property. To date, Planning staff has received and responded to two inquiries. Staff finds that the approval of the zoning change will not adversely affect the condition or value of the property in the vicinity **(Criteria Satisfied)**

4. **Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?**

The LDC states "This Land Development Code is intended to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo."

The subject property is not covered by a growth plan, area plan, or neighborhood plan.

The project meets some of the goals of infill development stated in the Go2030 Comprehensive Plan:

- the subject property is already served by supporting infrastructure; and,
- by extending and completing sidewalks along the property frontages on 34th Street South and Westrac Drive, the project will increase walkability.

Staff finds this proposal is consistent with the purpose of the LDC, the Go2030 Comprehensive Plan, and other adopted policies of the City.

Major Subdivision

The LDC stipulates that the following criteria is met before a major subdivision plat can be approved

1. **Section 20-0907 of the LDC stipulates that no major subdivision plat application will be accepted for land that is not consistent with an approved Growth Plan or zoned to accommodate the proposed development.**

The property is proposed to be zoned GC, General Commercial with a planned unit development (PUD) overlay to accommodate residential development that was approved in 2020, LI, Limited Industrial, and LI, Limited Industrial with a conditional overlay (C-O) that will accommodate future industrial development. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, Planning staff has received and responded to two inquiries. **(Criteria Satisfied)**

2. **Section 20-0907.4 of the LDC further stipulates that the Planning Commission shall recommend approval or denial of the application and the City Commission shall act to approve or deny, based on whether it is located in a zoning district that allows the proposed development, complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**

The property is proposed to be zoned GC, General Commercial with a planned unit development (PUD) overlay, LI, Limited Industrial, and LI, Limited Industrial with a conditional overlay (C-O). The GC with the PUD continues existing zoning on a portion of the site; the LI with the C-O zoning enables industrial development on the rest of the site. There is no area plan covering these properties. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments. **(Criteria Satisfied)**

3. **Section 20-0907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**

The applicant has provided a draft amenities plan that specifies the terms or securing installation of public improvements to serve the subdivision. This amenities plan has been reviewed by the Public Works Project Evaluation Committee (PWPEC). Any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles. **(Criteria Satisfied)**

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and hereby waive the requirement to receive the rezoning Ordinance one week prior to the first reading and place the rezoning Ordinance on for first reading and move to and approve the proposed 1) zoning change GC, General Commercial with a PUD, Planned Unit Development and AG, Agricultural to GC, General Commercial with a PUD, Planned Unit Development; LI, Limited Industrial; and LI, Limited Industrial with a C-O, Conditional overlay and 2) major subdivision **Westrac Third Addition** as the proposal complies with the Go2030 Fargo Comprehensive Plan Section 20-0906.F (1-4), Section 20-0907, the standards of Article 20-06, and all other applicable requirements of the LDC."

Planning Commission Recommendation: February 1, 2022

At the February 1st, 2022 Planning Commission hearing, by a vote of 6-0 with two Commissioners absent and three Commission seats vacant, that Commission moved to accept the findings and recommendations of staff and moved to recommend approval to the City Commission of the proposed 1) zoning change GC, General Commercial with a PUD, Planned Unit Development and AG, Agricultural to GC, General Commercial with a PUD, Planned Unit Development; LI, Limited Industrial with a C-O, Conditional overlay and 2) major subdivision **Westrac Third Addition** as the proposal complies with the Go2030 Fargo Comprehensive Plan Section 20-0906.F (1-4), the standards of Article 20-06, Section 20-0907, and all other applicable requirements of the LDC."

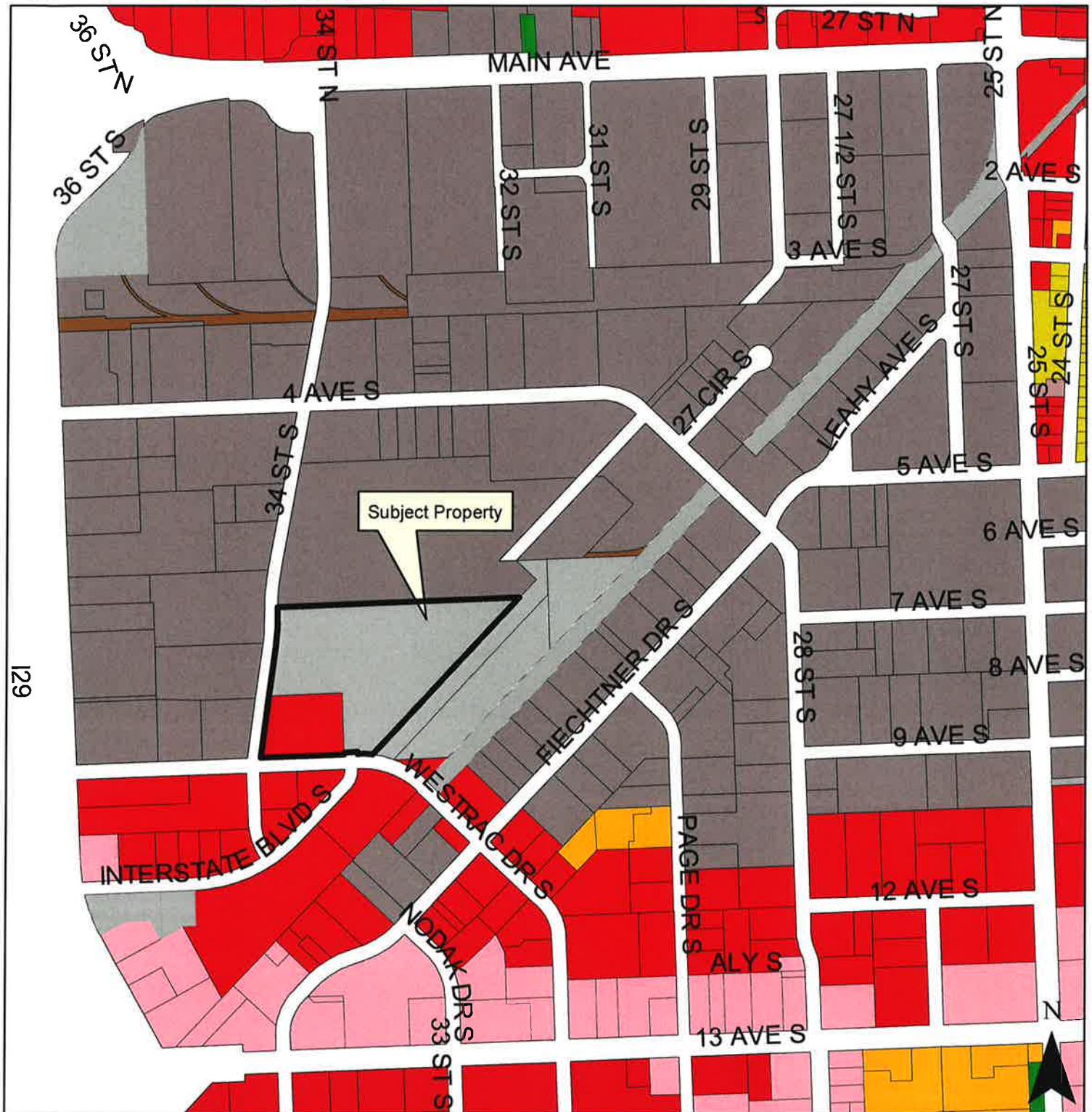
Attachments:

1. Zoning map
2. Location map
3. Preliminary plat
4. Draft conditional overlay

Plat (Major); Zone Change (GC with a PUD and AG to GC with a PUD and LI and LI with C-O)

Westrac Third Addition

3315 and 3361 Westrac Drive



Legend

AG	DMU	LC	MHP	SR-1
GC	GO	MR-1	NCO	SR-2
		MR-2	P/L	SR-3
		MR-3	UMU	SR-4
				SR-5
				SR-6
				SR-7
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				SR-99
				SR-100

300
Feet

Fargo Planning Commission
February 1, 2022

Plat (Major); Zone Change (GC with a PUD and AG to GC with a PUD and LI and LI with C-O)

Westrac Third Addition

3315 and 3361 Westrac Drive



Westrac Third Addition

Draft Conditional Overlay

January 26, 2022

(Updated May 25, 2022)

Applies to Lots 2 and 3, Block 1 of Westrac Third Addition, zoned LI, Limited Industrial

1. Prohibited Uses

- Detention Facilities
- Adult Entertainment Centers
- Event – Major
- Mining
- Aviation/Surface Transportation
- Aggregate Storage, Concrete Batching and Asphalt Mixing

2. Outdoor Storage

- Outdoor storage areas shall be screened by a 6-foot-high opaque fence if directly visible from ground level of Lot 1, Block 1.
- Outdoor storage areas shall not be located in the front setback area of the development ~~(ok)~~
- Outdoor storage areas shall not cover more than sixty (60) percent of the open space of the development

3. Gravel surfaces for outdoor storage, parking, and vehicle circulation are not allowed within 50 feet of the property line of Lot 1, Block 1 .

4. No heavy truck parking will be allowed in the front setback area, or on any side of the development directly visible when viewed from ground level, -from Lot 1, Block 1 . Heavy truck parking on the south side when viewed from ground level, within 50 feet of the property line of Lot 1, Block 1 , is prohibited

5. No truck docks or unloading areas will be allowed in the front setback area. Shop bays with south facing overhead doors visible from ground level within 150 feet from Lot 1, Block 1 are prohibited.

7. Residential Protections Standards outlined in LDC 20-0704 apply to the development. For the purposes of this conditional overlay:

- a. Lot 1, Block 1 of Westrac Third Addition shall be considered an MR zoned lot.
- b. A landscape buffer of evergreen trees spaced 20 feet apart, without a requirement for shrubs, is an acceptable buffer for residential protection.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

2792

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN WESTRAC THIRD ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in Westrac Third Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on February 1, 2022; and,

WHEREAS, the rezoning changes were approved by the City Commission on May 31, 2022,

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. The following described property:

Lot One (1), Block One (1) of Westrac Third Addition to the city of Fargo, Cass County, North Dakota,

that is currently zoned "GC", General Commercial, District, subject to the existing "PUD", Planned Unit Development Overlay, District, as established by Fargo Municipal Ordinance No. 5278, will hereby retain the base zoning of "GC", General Commercial, District, and retain the existing "PUD", Planned Unit Development Overlay, District.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 2. The following described property:

Lots Two (2) and Three (3), Block One (1) of Westrac Third Addition to the city of
Fargo, Cass County, North Dakota,

are hereby rezoned from "AG", Agricultural, District to "LI", Limited Industrial, District with a "C-
O", Conditional Overlay, District as follows:

1. The following uses are prohibited:

- a. Detention Facilities;
- b. Adult Entertainment Centers;
- c. Event-Major;
- d. Mining;
- e. Aviation/Surface Transportation; and
- f. Aggregate Storage, Concrete Batching and Asphalt Mixing.

2. Outdoor Storage

- a. Outdoor storage areas shall be screened by a 6-foot-high opaque fence if directly visible from the ground level of Lot One (1), Block One (1).
- b. Outdoor storage areas shall not be located in the front setback area of the development.
- c. Outdoor storage areas shall not cover more than sixty (60) percent of the open space of the development.

3. Gravel surfaces for outdoor storage, parking, and vehicle circulation are not allowed within fifty (50) feet of the property line of Lot One (1), Block One (1).

4. No heavy truck parking will be allowed in the front setback area, or on any side of the development directly visible when viewed from ground level, from Lot One (1), Block One (1). Heavy truck parking on the south side when viewed from ground level, within fifty (50) feet of the property line of Lot One (1), Block One (1), is prohibited.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

- 1 5. No truck docks or unloading areas will be allowed in the front setback area. Shop
2 bays with south facing overhead doors visible from ground level within 150 feet
3 from Lot One (1), Block One (1) are prohibited.
4
5 6. Residential Protections Standards outlined in Land Development Code 20-0704
6 apply to the development. For the purposes of this conditional overlay:
7 a. Lot One (1), Block One (1) of Westrac Third Addition shall be considered
8 an "MR" zoned lot.
9 b. A landscape buffer of evergreen trees spaced twenty (20) feet apart, without
10 requirement for shrubs, is an acceptable buffer for residential protection.

11 Section 3. The following described property:

12 Lot Four (4), Block One (1) of Westrac Third Addition to the city of Fargo, Cass
13 County, North Dakota,

14 is hereby rezoned from "AG", Agricultural, District to "LI", Limited Industrial, District.

15 Section 4. The City Auditor is hereby directed to amend the zoning map now on file in his
16 office so as to conform with and carry out the provisions of this ordinance.

17 Section 5. This ordinance shall be in full force and effect from and after its passage and
18 approval.

19 (SEAL)

20 Attest:

21 _____
Steven Sprague, City Auditor

22 _____
Timothy J. Mahoney, M.D., Mayor

23 First Reading:
Second Reading:
Final Passage:

27h

MEMORANDUM

TO: City Commission

FROM: Nicole Crutchfield, Planning Director *NC*

DATE: May 25, 2022

RE: Renaissance Zone Application for Great Plains Block 3 Venture, LLC (330-F) located at 225 4th Avenue North & 419 3rd Street North

The city received a Renaissance Zone (RZ) application from Great Plains Block 3 Venture, LLC to construct a new residential building at 225 4th Avenue North & 419 3rd Street North. Pursuant to the application, the intent of the project is to remove the existing underutilized structures and construct a new 6-story, 184,500 square-foot residential building with 114 units and main floor parking. Construction is anticipated to begin later 2022 with completion in 2024. Attached is a copy of the staff report and corresponding materials.

As indicated in the attached documentation, the project met all state and local requirements for approval and is consistent with a number of goals and objectives as established in the Fargo Renaissance Zone Development Plan. The application indicates an investment of approximately \$23,400,000, which exceeds the minimum investment threshold as set forth in the plan.

The RZA unanimously recommended approval of this project on April 27, 2022.

Recommended Action: Approve the Renaissance Zone new construction application for Great Plains Block 3 Venture, LLC and grant state income tax and property tax exemptions as recommended by the Renaissance Zone Authority.





**Renaissance Zone Staff Report for
Great Plains Block 3 Venture, LLC (330-F)
419 3rd Street North & 225 4th Avenue North**

Project Evaluation:

The City of Fargo received a Renaissance Zone application from Great Plains Block 3 Venture, LLC to construct a residential building at 419 3rd Street North and 225 4th Avenue North. Pursuant to the application, the intent of the project is to construct a 6-story building (five levels of residential units, approximately 114 total units) with enclosed and exterior parking. Construction is anticipated to begin late 2022 with completion in 2024.

The Planning Department has reviewed the application and has provided a project ranking based on the analysis below:

1. **Renaissance Zone Plan Goals:** Use consistent with the RZ Plan (as per Visions and Goals): As noted in the 2019 Renaissance Zone Development Plan.
 - a. *Grow as a Neighborhood:* Invest in housing to increase the population living Downtown and maintain Downtown's diversity.
The project will add approximately 114 residential market rate housing units.
 - b. *Prosper as a Business Center:* Increase the number and types of jobs Downtown.
The project does not increase jobs in Downtown, however, it does provide an increase in residents to support Downtown businesses. More residents can be a driver for more services and activities, reinforcing the cycle of economic benefit.
 - c. *Thrive as a Destination:* Create a unique Downtown experience with an activated riverfront and vibrant sidewalks and public spaces that serve as the backdrop of the community's social life.
Though this is a residential project, the project will add 114 residential units in an area south of the tracks that doesn't have a concentration of residential units as other areas in Downtown (the City Centre Lofts project has been constructed recently just to the south of the subject property).
 - d. *Be a model for Inclusive Growth and Development:* Protect Downtown's diversity and evolve as a model for equitable growth and development.
Project does not address diversity, public amenities or needs for specific populations.
 - e. *Complete our Streets:* Make complete streets common place and encourage trips by foot, bicycle, and bus, as well as car.
Bike storage is proposed in the southwest corner of the structure. Applicant is anticipating a space for ride-sharing services, proposed to be located within a street parking space on 3rd Street North. The site is several blocks from Broadway and less than a half-mile from the MATBUS GTC (Ground Transportation Center).
 - f. *Park Smart:* Manage parking resources to meet the needs of drivers, while also making room for new development and activity.
The project proposes 182 parking spaces, including ground floor enclosed parking (140 spaces) and exterior parking on the west side of the development (42 spaces), which the applicant will need to coordinate the details and approvals through separate processes. No underground parking is proposed for this project (nor was it explored), which could increase developability of the site, though site conditions could make this challenging.
 - g. *Play with purpose:* Develop a system of connected all-season green spaces designed for people (of a range of ages and interests) and purpose (as infrastructure that absorbs stormwater).
The project proposes green space for residents in the southeast corner, which currently utilizes areas of the public realm. The design in this area is important, as the Development Plan identifies that a project should address block definition at the intersection of 2nd Street and 4th Avenue. This intersection also provides a

connection from Downtown into the Red River greenway through an opening in the floodwall (another opening is located at 1st Avenue North, and a pedestrian bridge over 2nd Street and the floodwall, just south of City Hall, is anticipated to be constructed in 2023). No information is provided on the design of greenspaces (including the corner or other upper-level outdoor amenities). Stormwater capture is not proposed as part of the project, though the applicant notes improved conditions than previously with greenspace proposed.

(14/20 points)

2. **Investment Thresholds:** Does the investment comply with minimum investment thresholds (locally determined) for residential and commercial projects as set forth in this RZ Plan?

According to the application, the structure accommodates (number) square feet, as follows:

- *Proposed Building Total:* approximately 184,500 square feet
- *Residential:* approximately 138,600 square feet (approximately 30,100 square feet is common area)
- *Parking:* approximately 45,900 square feet

The application estimates a total capital investment of \$23,400,000, which calculates to approximately \$126 per square foot.

(10/10 points)

3. **High Priority Land Use:** The new construction or proposed improvements are representative of “High Priority Land Uses” as defined by this RZ Plan.

- a. **Primary Sector Business:**
No
- b. **Active Commercial, Specialty Retail or Destination Commercial:**
No
- c. **Mixed Use Development:**
No

(0/20 points)

4. **Targeted Areas:** Is the investment located in a “Targeted Area” as defined by this RZ Plan? Consideration shall be given to whether this property has been vacant or underutilized for a period of time and/or whether the property is specifically targeted for clearance.

- a. **Parcels that have been vacant or underutilized for an extended period of time:**
The property has been underutilized for a number of years, including office space and vacant warehouse space. In 2016-2017, 2nd Street was re-aligned, which impacted the properties and structures on the east side.
- b. **Parcels specifically targeted for clearance:**
The RZ Plan identifies Block 47 for Clearance and redevelopment; mixed-use or housing with definition of block corner at 2nd Street and 4th Avenue.

(10/10 points)

5. **Urban Design:** Is the project representative of strong urban design principles?

The project includes strong urban design principles, including density, form, and proximity to amenities. The design contemplates the interface of the structure to the right-of-way, as ground floor facades along 4th Avenue, and the south portion of the west façade along 3rd Street include storefront systems, glazing and canopies that create a more walkable environment. The façades on the north half of the property are less walkable, as they do

not have the same treatment to the façade. Additionally, 2nd Street is more challenging due to grading of the road and underpass due to the railroad. The site is located adjacent to the Red River where residents can connect to metro area trails and other destinations.

Staff has some concern that the majority of the exterior building material consists of metal in Downtown. The project is located within the DMU, Downtown-Mixed Use zoning district and will have to meet the architectural intent and other requirements of that zoning district, so materials may change.

(8/10 points)

6. **Investment Analysis:** Consideration and analysis as to the total actual investment in the project.

As proposed, the redevelopment project and improvement costs exceed both the 50% (true and full value of the building) and \$100 per square foot requirement. As previously noted, the application represents a total estimated investment of \$23,400,000.

(10/10 points)

7. **Business Relocation:** Consideration as to whether the project will include or accommodate the relocation of a business from another North Dakota community?

The project does not involve the movement or relocation of a business from another North Dakota community.

(criteria does not apply)

8. **Street Activation:** Will the project fit contextually and will the project contribute or enhance the area from an architectural perspective?

The project is architecturally designed and provides interest with varying articulation, glazing, textures, and other horizontal elements, such as canopies. Renaissance Zone projects are anticipated to be conscience of four-sided design, which has been seen with other projects in Downtown. The north portion of the project does not have the same design treatment, specifically the north façade is more “blank” than other facades (though this is adjacent to the railroad tracks). Street activation can be challenging without commercial on the ground floor, and with parking, even more so.

(8/10 points)

Summary:

This application received a score of 60 on a 90-point scale. The applicant meets criteria and the project is generally consistent with the Renaissance Zone Development Plan. The project ranking total is lower than typical (historically, Renaissance Zone projects typically rank in the 90's). However, there are several factors to explain this project ranking that should be considered.

When the Renaissance Zone Development Plan was updated in 2019, the goals were adjusted to align with the Downtown InFocus plan, and with only a few projects since the adoption, we are still seeing how the new metrics are working with new projects.

Since the updated Development Plan, the Renaissance Zone Authority has reviewed one residential project and two mixed-use projects, so this application is the second solely residential project. This project is towards the edge of the downtown area, when typically we see mixed-use projects in the core of downtown. When reviewing the redevelopment opportunity for this block, the Development Plan specifically states this block as an opportunity for mixed-use or housing. The Downtown InFocus plan proposes this location is appropriate for residential use.

Additionally, staff understands that projects can't be all things and meet all goals. Having a variety of uses and structures contribute to the overall fabric of Downtown. Downtown projects typically include structures that are mixed-use, including commercial and residential components. This project does not score as high because there is no commercial component (which was also the case with the residential project in the Oak Grove neighborhood, project 311-F).

The proposed new construction project surpasses the local capital improvement requirement of \$100 per square foot for new construction. The amount invested in the project exceeds state and local guidelines. The project does not involve the relocation of commercial businesses from another North Dakota city. The applicant will not be seeking any historic preservation tax credits. The project will make use of a lot that is currently underutilized.

Although the project does not score as high as others in the past, staff still believes this project will be a benefit to the downtown community and will positively contribute to the surrounding neighborhood and businesses and is recommending approval. The project is generally consistent with criteria set forth in the RZ Plan.

Minimum Criteria (New Construction Proposals)			
Criteria:		Staff Rating	Possible Points
1	Consistency with Plan Goals	14	20
2	Investment Thresholds	10	10
3	High Priority Land Use	0	20
4	Consistency with Targeted Areas	10	10
5	Urban Design	8	10
6	Investment Analysis	10	10
7	Business Relocation	N/A	N/A
8	Street Activation	8	10
Total Rating (90 possible points)		60	90

Suggested motion:

Recommend approval to the Fargo City Commission to approve the application submitted by Great Plains Block 3 Venture, LLC and to grant the property tax exemption and the State income tax exemptions as allowed by the Renaissance Zone law contingent upon completion of the project and verification of costs.





APPLICATION FOR RENAISSANCE ZONE PROJECT

Property owners, business owners, developers or investors interested in pursuing a Renaissance Zone project should review the 2019 RZ Plan. The RZ Plan delineates the current geographical boundaries of the program (only certain blocks within the downtown core are included) and provides additional detail on minimum investment requirements and applicable program goals and objectives that must be met.

Application submitted for (check all that apply):

- ☒ New Construction
 ☐ Commercial Lease
☐ Purchase with Major Improvements
 ☐ Rehabilitation: ☐ Commercial ☐ Residential
☐ Primary Residential Purchase
 ☐ Block Addition

Property Owner Information	Contact Person Information (if different than owner)
Name (printed): Great Plains Block 3 Venture, LLC	Name (printed): Deb Wendel Daub
Name (printed):	Address: 210 Broadway, Suite 300
Address: 210 Broadway Suite 300	Fargo, ND 58102
Fargo, ND 58102	

Parcel Information
Address: 225 4 AVE N & 419 3 ST N
Unit Number:
Renaissance Zone Block Number: 47
Legal Description (attach separate sheet if more space is needed):
Parcel Number: 01-2160-00083-000 & 01-1540-01502-000

Is this property listed on or a contributing structure to the National Register of Historic Places? ☐ Yes ☒ No
 Do you intend to apply for a Historic Preservation Tax Credit in conjunction with this project? ☐ Yes ☒ No

Project Information	
Total Project Cost: (Qualified Capital Improvements) \$23.4MM	
Current Use of Property: Single story office building. Vacant former school district warehouse and food prep kitchen	
Anticipated Use Upon Completion: Market rate apartments	
Expected Date of Purchase: Summer 2022	Expected Date of Occupancy: Fall 2024
Estimated Property Tax Benefit: (Over five year exemption period) \$1.6MM	Estimated State Income Tax Benefit: (Over five year exemption period) -
Current Employees: (Full-time equivalent) -	Anticipated Employees: (Full-time equivalent) -

Scope of Work

Six story building with five levels of apartments totaling +/-114 units. First floor podium will include parking for residents and some amenity features such a lobby/mail, parcel room, pet wash and bike parking. Project will include rooftop outdoor terrace space and clubroom amenity.

Additional Project Information

New Construction/Rehabilitation/Purchase with Improvements Only

Current Building Value: (Taxable Improvement Value) \$1.49M + \$1.82M	Estimated Building Value Upon Completion: (Taxable Improvement Value) \$19.9M
Building Area Upon Completion (SF): 184,500	Number of Stories Upon Completion: 6

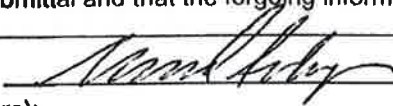

Commercial Lease Only

Lease Area Upon Completion (SF): n/a			
Type of Business:			
<input type="checkbox"/> New business moving to the Renaissance Zone	<input type="checkbox"/> Expanding Business moving to the Renaissance Zone	<input type="checkbox"/> Existing Business Expanding within the Renaissance Zone	<input type="checkbox"/> Continuation of a lease moving from one Renaissance Zone Project to another Renaissance Zone Project

Residential Purchase Only

Will this be your primary place of Residency?: n/a

Acknowledgement – We hereby acknowledge that we have familiarized ourselves with the rules and regulations to the preparation of this submittal and that the foregoing information is true and complete to the best of our knowledge.

Owner (Signature): 	Date: 4-6-2022
Joint Owner (Signature): _____	Date: _____
Representative (Signature): 	Date: 4-6-2022

THE FOLLOWING CHECKLIST MUST BE COMPLETED AND SUBMITTED WITH THE APPLICATION FORM:

		Submitted	N/A
Renaissance Zone Project	Current photos of property, relevant to project scope and proposed renderings of the proposed project	<input checked="" type="checkbox"/>	
	Certificate of Good Standing from the Office of the State Tax Commissioner	<input checked="" type="checkbox"/>	
	Business Incentive Agreement from the Department of Commerce for all non-residential projects	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	For residential purchases proved a copy of the purchase agreement	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Goals and objectives as outlined in the 2015 Fargo Renaissance Zone Development Plan (Attachment A)	<input checked="" type="checkbox"/>	<input type="checkbox"/>

APPLICATION DEADLINES:

The Renaissance Zone Authority regularly meets on the Fourth Wednesday of each month at 8:00 am in the in the City Commission Chambers at 225 4th Street North, Fargo, ND 58102. For consideration during a monthly meeting:

- Renaissance Zone applications are due by 4:30 pm on the **first Wednesday of each month.**

REQUIREMENTS, POLICIES, AND GUIDELINES:

The Renaissance Zone is administered according to the following written documents, each of which are available on the City of Fargo's website.

- Renaissance Zone Designation
 - o City of Fargo Renaissance Zone Development Plan
 - o North Dakota Renaissance Zone Program Guidelines

CERTIFICATION:

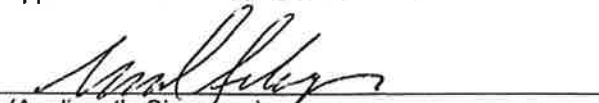
Applicant certifies that, to the best of his/her knowledge and belief, the information contained in the application and attached hereto is true and correct. Applicant also certifies that he/she understands all written requirements, policies, and guidelines of the Fargo Renaissance Zone Authority, the City of Fargo, and/or the State of North Dakota governing the use of the procedure or program being applied for:


(Applicant's Signature)

Deb Wendel Daub
(Printed Name)

4-6-2022
(Date)

If the property owner(s) and applicant are different, the property owner certifies that he/she has full knowledge of this application and consents to its submission:


(Applicant's Signature)

Mike Allmendinger
(Printed Name)

4-6-2022
(Date)

(Applicant's Signature)

(Printed Name)

(Date)

Goals of the Fargo Renaissance Zone Plan

Is the proposed use of the project consistent with the RZ Plan? As noted in the Renaissance Zone Development Plan the desired land use will contribute to a number of goals:

1. *Grow as a Neighborhood.* How will this project invest in housing to increase the population living Downtown and maintain Downtown's diversity?

Project adds 114 new housing units (+/-190 residents) on a site that was formerly only office space and warehouse.

2. *Prosper as a Business Center.* How will this project increase the number and type of jobs Downtown (or accessible from Downtown)?

Project will add additional residents supporting existing and new businesses in downtown. Adding more downtown residents is a stated goal of the InFocus plan: "More people living downtown results in more people supporting local retail during all times of the day and week. The greater the number of those living downtown, the greater the range of services and activities that, in turn, further attract more residents. It is a reinforcing cycle that brings substantial economic benefits."

3. *Thrive as a Destination.* How will this project create a unique Downtown experience with an activated riverfront and vibrant sidewalks and public spaces that serve as the backdrop to the community's social life?

Project will contribute to the City's riverfront plans by adding high quality infill development and new activity in this underutilized area. A rooftop amenity would be designed to take advantage of this riverfront site and views of the river corridor.

4. *Be a Model for Inclusive Growth and Development.* How will this project protect Downtown's diversity and evolve as a model for equitable growth and development?

The project will replace underutilized office and vacant warehouse space with market rate apartments. These apartments and the increased income density will support downtown's existing businesses. The increased units will contribute to long term term downtown population growth.

5. *Complete our Streets.* How will this project make complete streets common place and encourage trips by foot, bicycle, and bus, as well as car?

The 4th ave corridor and connection to the riverfront has in recent decades suffered from a lack of residential activity and an abundance of surface parking. This corridor has recently had several infill projects which are helping make this project more walkable, inviting, and activated. This project would continue this efforts to create a better connection between the riverfront and downtown.

6. *Park Smart.* How will this project manage parking resources to meet the needs of drivers, while also making room for new development and activity?

Project will provide adequate off-site parking for the residents.

7. *Play with Purpose.* Will this project develop a system of connected all-season green spaces designed for people (of a range of ages and interests) and purpose (as infrastructure that absorbs stormwater)?

The project adds a green space for residents in the southeast corner of the project near the intersection of 4th Ave and 2nd St. The high quality development will also contribute to a better public realm and make 4th Avenue a more inviting connection between downtown and the riverfront.

AdditionNameN Dak Urban Renewal 1st

BlockLegal3

LotLegalLT 2 LESS PT OF LT 2 DESC AS: BEG AT THE NE COR OF SD LT 2; THEN S 87° 07' 40"W ALG THE NLY LN OF SD LT 2 FOR A DIST OF 84.55'; THEN S 32° 28' 16" W FOR A DIST OF 102.27'; THEN S 57° 31' 44" E FOR A DIST OF 25'; THEN S 32° 28' 16" W FOR A DIST OF 63.71' TO A PT OF INTERSECTION WITH THE SLY LN OF SD LT 2; THEN N 87° 04' 06" E ALG THE SLY LN OF SD LT 2 FOR A DIST OF 144.53' TO THE SW COR OF SD LT 2; THEN NLY ALG THE ELY LN OF SD LT 2 FOR A DIST OF 151' TO THE PT OF BEG; SD TRACT CONTAINS 17,122 SF MORE OR LESS; ALSO LESS DEDICATION #1631416

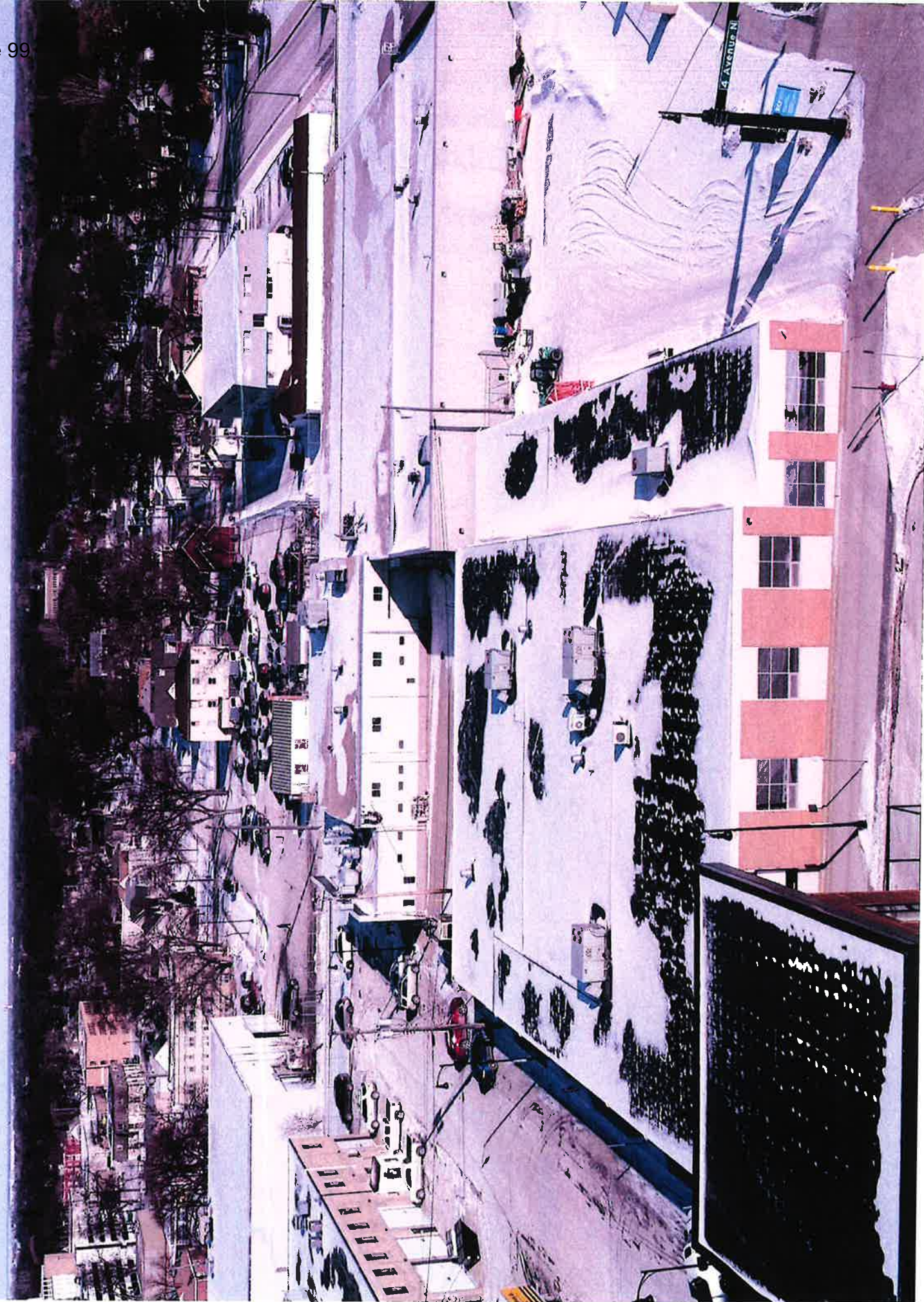
LegDescAdditional5/24/17 SPL/FR 01-2160-00080-000 SPL#2017-050 DOC# 1505444 *9/28/2021
SPL/FRM 01-2160-00082-000 VIA VACATION #1630487 & DEDICATION #1631416

AdditionNameKeeney & Devitts 2nd

BlockLegal24

LotLegal6, 7, 8, 9 & 13 THRU 18, KEENEY SUBD OF LTS 6, 7 & 9 & LT 1, BLK 3 ND R-1 URBAN RENEWAL & ALL VAC N-S & E-W ALLEYS IN BLK 24 TOGETHER WITH THAT PT OF VAC 5TH AVE N LYING NLY OF BLK 24 OF SD KENNEY AND DEVITT'S 2ND AND SD KENNEY'S SUBDIV AND SLY OF A LN WHICH IS PARALLEL WITH AND 30 FT SLY OF THE CENTERLINE OF BNSF RAILWAY CO MAINLINE TRACK; SD TRACT CONTAINS 54,322 SF; LESS DEDICATION #1631416

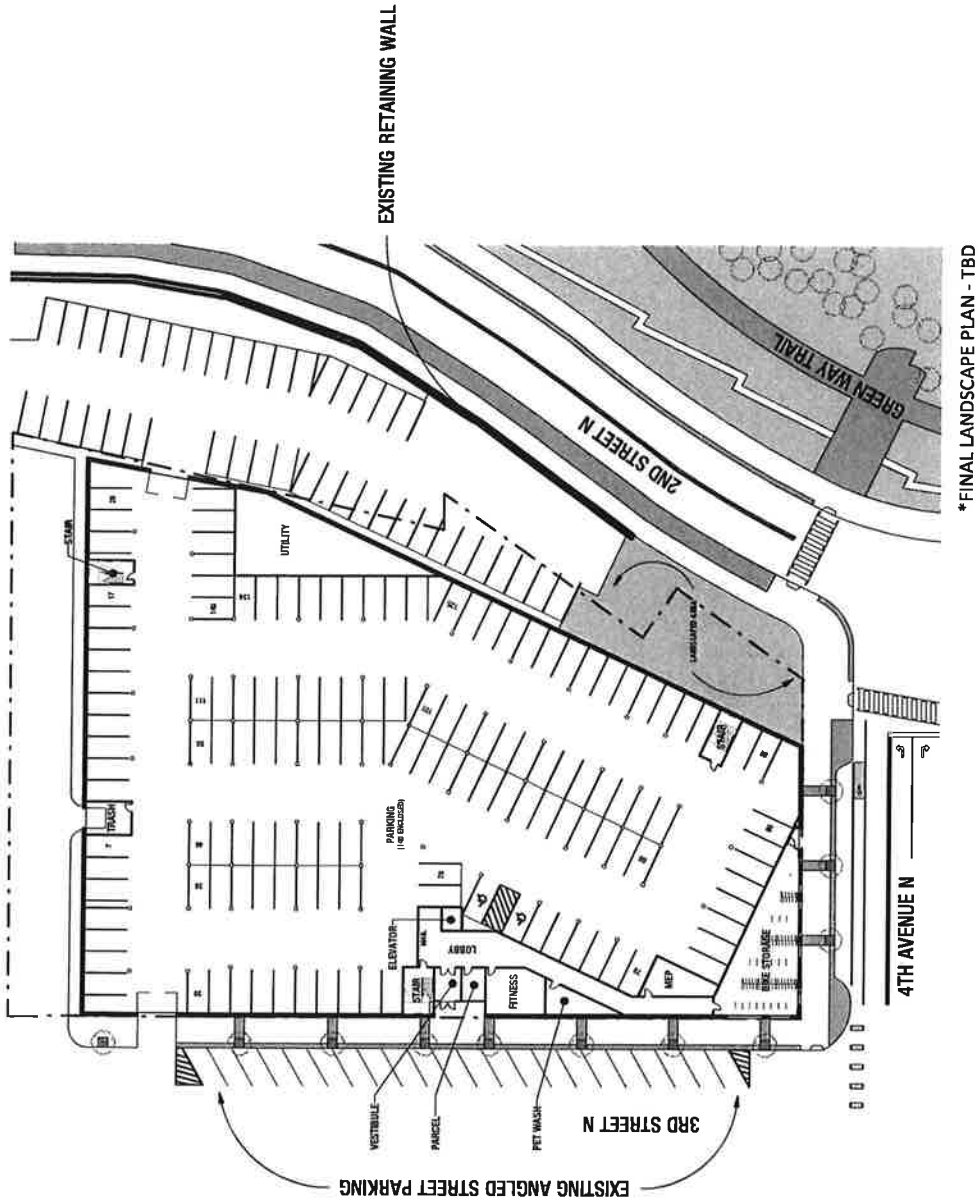
LegDescAdditional*06/07/91 LEGAL DESC CORR *09/11/96 LEGAL DESC CORR *02/14/17 SPL/FR 01-1540-01500-000 SPL# 2017-040 DOC#1472618 *9/28/2021 SPL/FRM 01-2160-00082-000 VIA VACATION #1630487 & DEDICATION #1631416





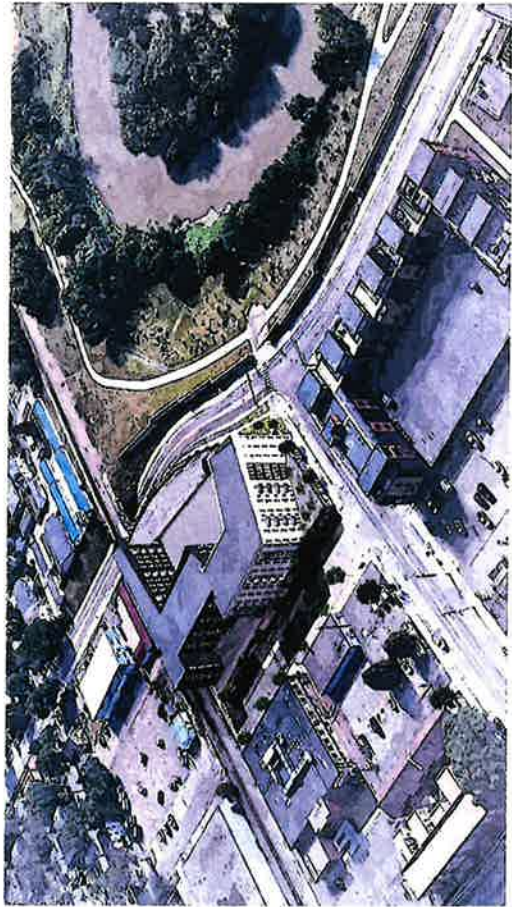
BLOCK 3 APARTMENTS
RENAISSANCE ZONE AUTHORITY
APRIL 27, 2022





FIRST FLOOR PLAN / SITE PLAN

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AERIAL VIEW LOOKING NORTHEAST

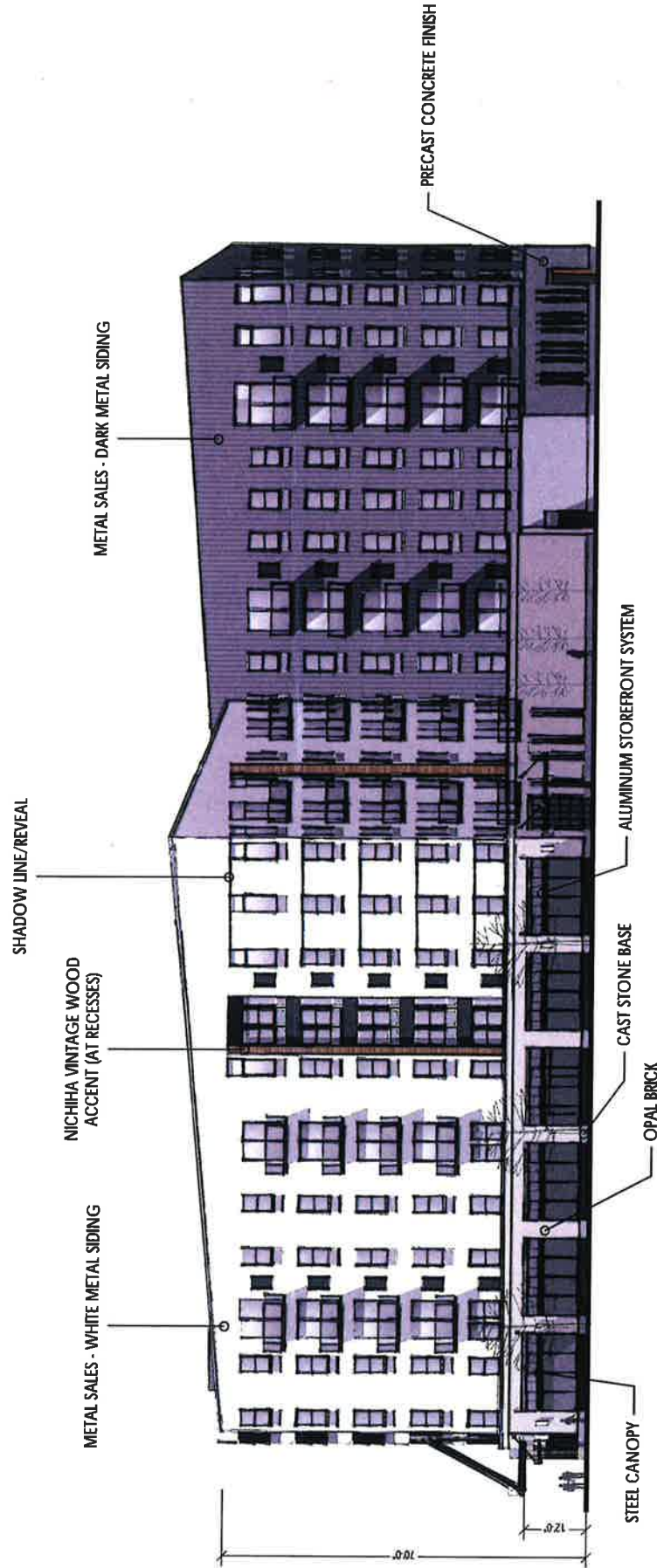


AERIAL FROM ABOVE RIVER LOOKING WEST

PRELIMINARY RENDERINGS

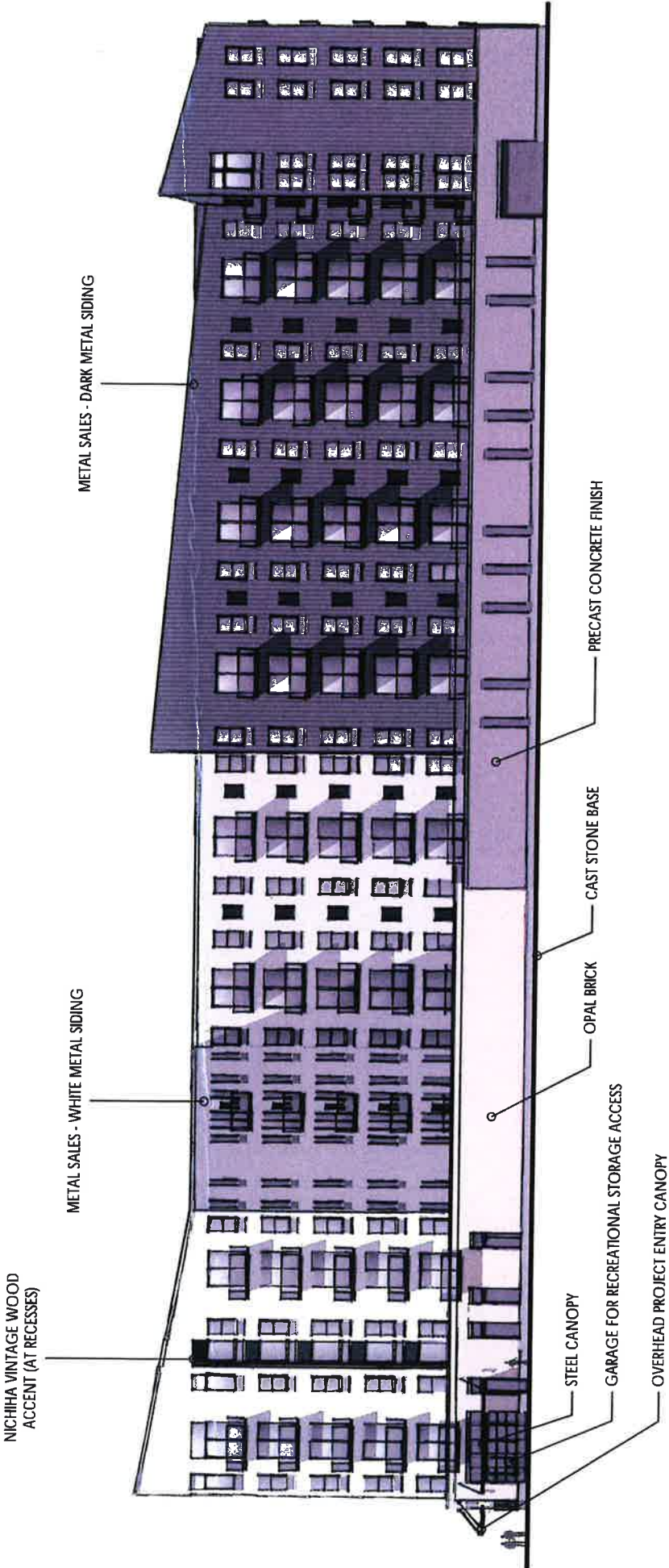
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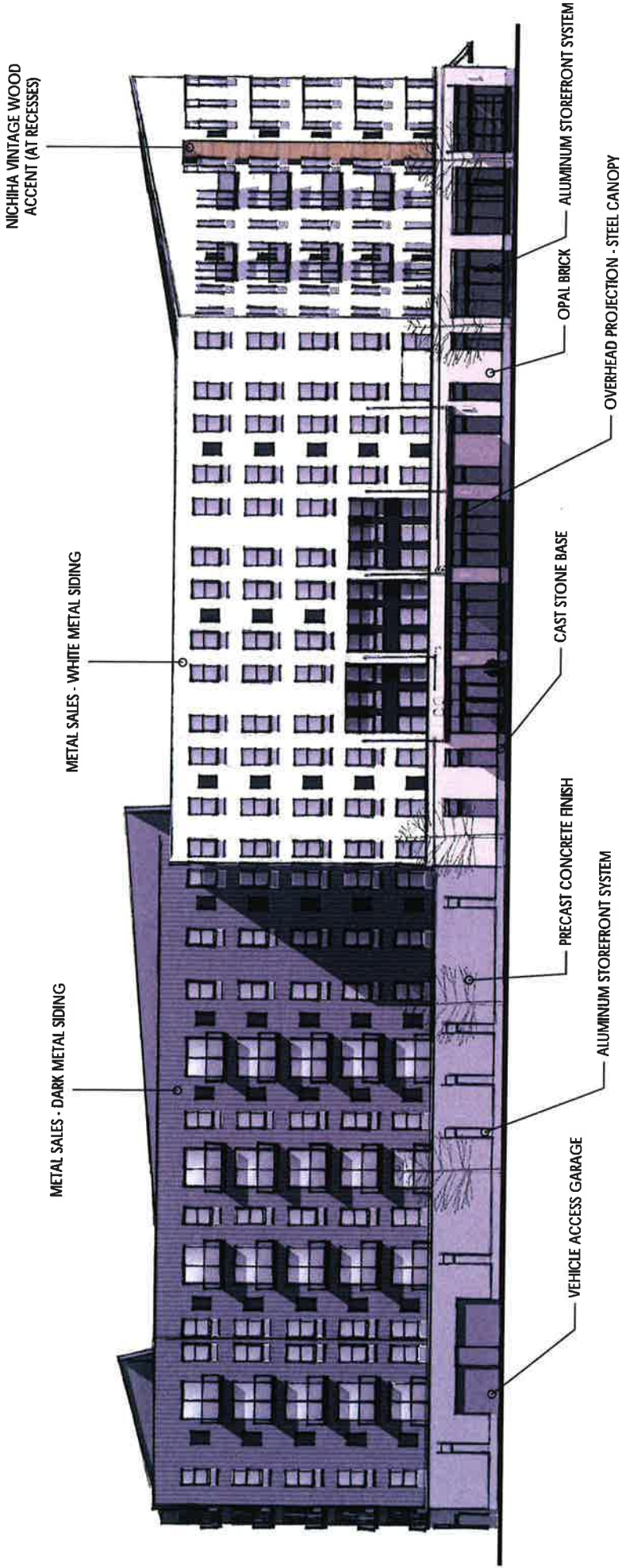
SOUTH ELEVATION

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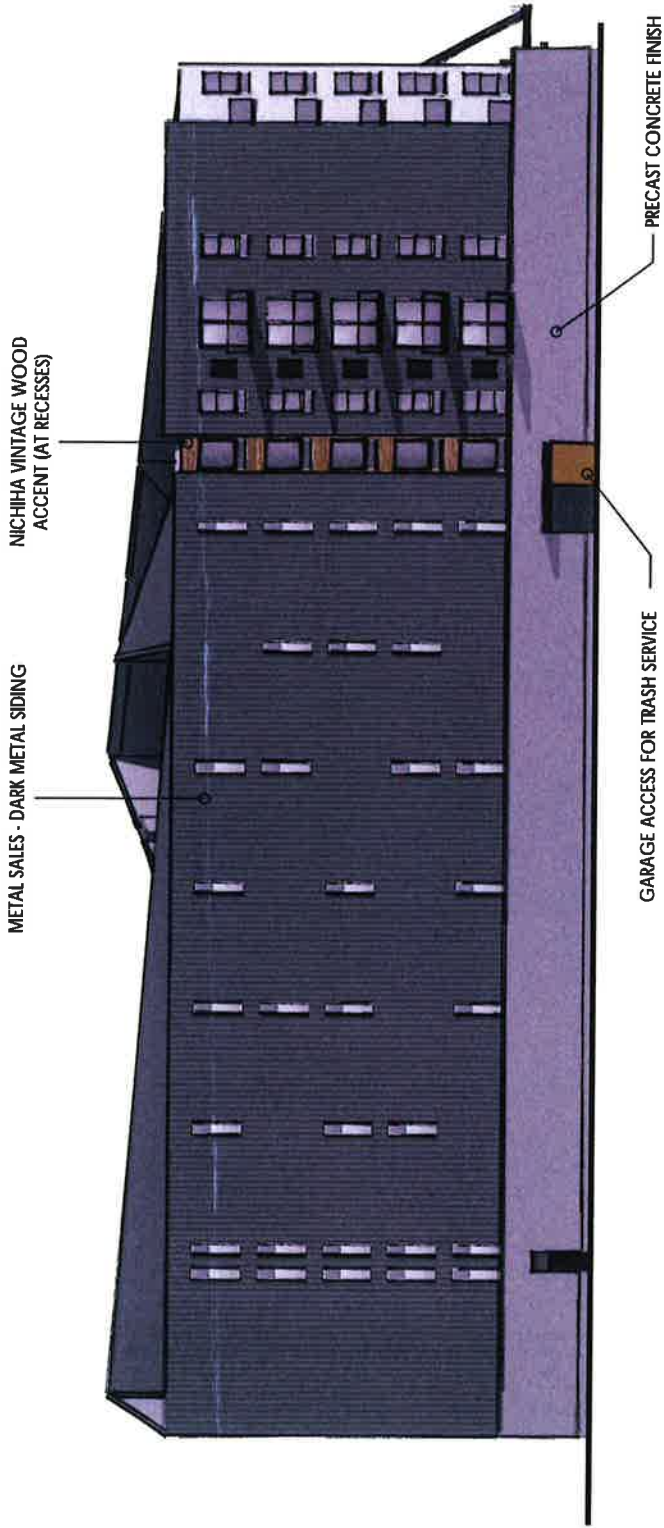
EAST ELEVATION

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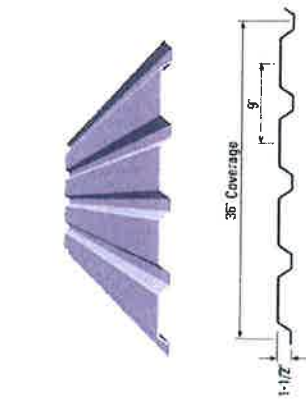
WEST ELEVATION

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NORTH ELEVATION

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METAL SALES - DARK METAL PANEL SIDING



SLATE GRAY



SLATE GRAY - CASE STUDY



CEDAR



NICHIHA VINTAGEWOOD CEDAR (ACCENT) - CASE STUDY

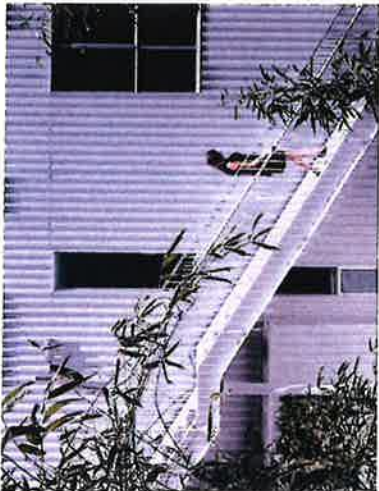


METAL SALES - WHITE METAL PANEL SIDING



LINEN WHITE

LINEN WHITE (SOLID PANELS) - CASE STUDY



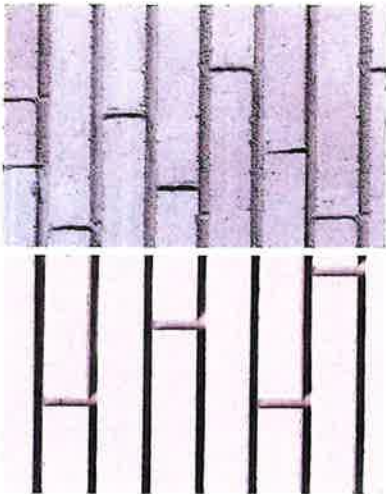
LINEN WHITE

LINEN WHITE - CASE STUDY

METAL & FIBER CEMENT PANEL - BASIS OF DESIGN

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WHITE PEARL BRICK | OPAL BRICK



WHITE PEARL BRICK - CASE STUDY



OPAL BRICK - CASE STUDY



OBSIDIAN BRICK

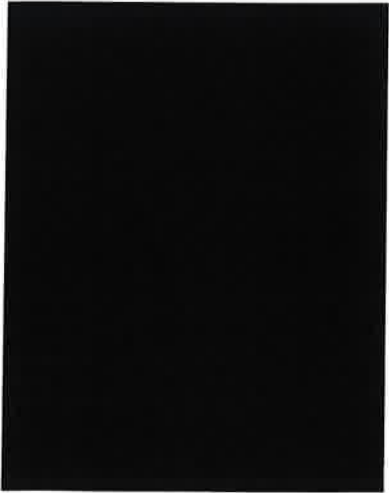


OBSIDIAN BRICK - CASE STUDY



OBSIDIAN BRICK - CASE STUDY

MASONRY - BASIS OF DESIGN



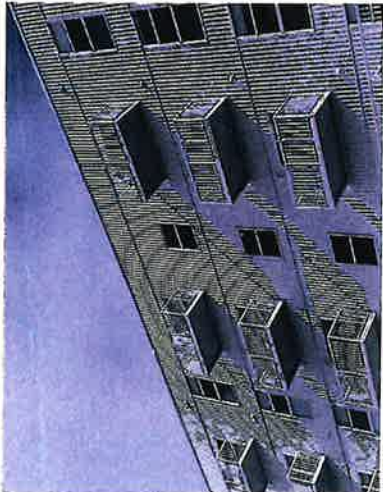
STOREFRONT - TUBELITE - BLACK ANODIZED



RESIDENTIAL WINDOWS - MARVIN ESSENTIAL
EBONY (@ GRAY SIDING)



RESIDENTIAL WINDOWS - MARVIN ESSENTIAL
STONE WHITE (@ WHITE SIDING)



WHITE BALCONY - ALUMADECK
POWDERCOAT FINISH TO MATCH SIDING



DARK BRONZE BALCONY - ALUMADECK
POWDERCOAT FINISH TO MATCH SIDING

OTHER

A respect for the past history of this site, Fargo, and the Red River leaned into the former industrial roots that defined this region for much of the 19th century. Large scale mills dotted the Red River along its banks, offering both a pragmatic and distinctive building form. The angles, massing, simplicity, and focus on the river were all elements that defined these building types, and provide an opportunity for the design of Block 3 to draw inspiration from.

RED RIVER INDUSTRY

A Multiple steamboats and barges can be seen on the Red River as industry flourished along its banks.

UNION ELEVATOR FROM WEST

B The Union Elevator along the Red River in Fargo served as one of the city's first towering structures. The elevator was removed between 1906 and 1910.

ELEVATORS

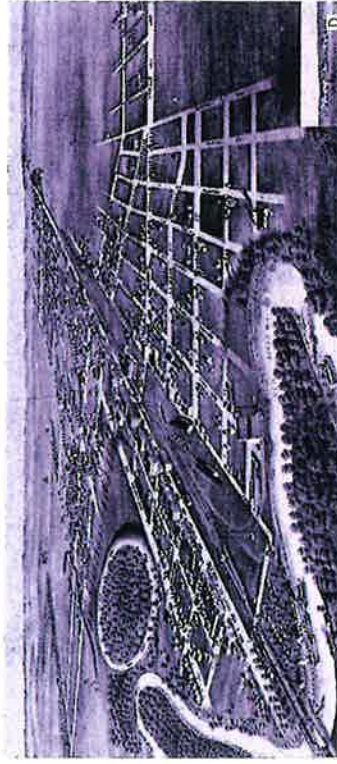
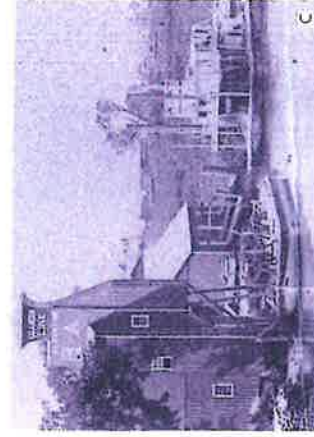
C The Grandin Elevator (late 1800's) was one of many elevators that dotted the river on both sides during the height of river transportation and industry in Fargo/Moorhead.

HISTORIC FARGO

D 1880 illustrated map depicting Fargo. Block 3 is indicated on the map in green.

UNION ELEVATOR FROM RIVER

E The Union Elevator as seen from the river, showing the complexity of the mill and elevator system which fed the regional barges for transport up to Winnipeg.



CASE STUDIES - HISTORICAL CONTEXT

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Drawing from a long history of Scandinavian heritage, inspiration for Block 3 looked towards the Nordic Countries of Europe for design language that could be a first for Downtown Fargo. Sharp angles, monolithic materials, and simplistic openings exhibit a design language that is both subtle and powerful in letting the architecture speak for itself. As we looked towards regional case studies, projects both around the country were reviewed based off of these similar characteristics, but with forms that were more similar to our regional context.

KRØYERS PLADS

VILHELM LAURITZEN ARCHITECTS | COPENHAGEN, DENMARK

A Materials | Demonstrates use of monolithic material to celebrate simplicity and material expression

ENDI MIXED USE

DSGW ARCHITECTS & CONFLUENCE | DULUTH, MN

B Rooftop Patio | Multiple outdoor amenity space's connection to nature

AMARA APARTMENTS

ANKROM MOISON ARCHITECTS | PORTLAND, OR

C Rooftop Patio | Embraces outdoor amenity space's connection to nature

MANDAL SLIPWAY HOUSING COMPLEX

REIULF RAMSTAD ARCHITECTS | VEST AGDER, NORWAY

D Roof line | Dynamic roof line creates intrigue and a break from the norm


CASE STUDIES - EXTERIOR DESIGN

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MEMORANDUM

TO: Fargo City Commission

FROM: Jim Gilmour, Director of Strategic Planning and Research 

DATE: May 26, 2022

SUBJECT: Development Agreement for 419 3rd Street North site

The Economic Development Incentives Committee is recommending approval of Tax Increment Financing (TIF) funds for the redevelopment of property at 419 3rd Street North and 225 4th Avenue North. The project is a 100+ unit apartment building downtown.

The City Commission previously selected this project for the city 419 3rd Street North property.

The project developer has also requested approval of Renaissance Zone (RZ) incentives. The Renaissance Zone Authority has recommended approval of that application.

The developer is requesting ~\$1.4 million in TIF funds to demolish the buildings on the sites, clean up the sites, address any environmental problems and replace public infrastructure adjacent to the sites. Another \$50,000 of TIF funds would be used for administration. The estimated length of the TIF district would be ~9 years following the end of the RZ incentives.

City financial adviser PFM reviewed the project and stated in the report:

- **"The base scenario without public assistance along with the sensitivity analysis demonstrates the project would be unlikely to be feasible without assistance."**
- **"The estimated internal rate of return is appropriate given the risk level for this type of project."**
- **"...PFM concludes the project would not be feasible without public assistance."**

A public hearing on the Developer Agreement is part of the review process. One of the purposes of the hearing is to provide potential competitors an opportunity to comment if they feel the agreement would result in unfair competition.

A summary of the terms of the agreement, the PFM report and the development agreement are attached.

Recommended Motion:

Approve the Developer Agreement with Great Plains Block 3 Holdings, LLC to sell property at 419 3rd Street North and to provide TIF funds for the project.

Block 3 Development Agreement – Terms included in the agreement:

- The City is agreeing to sell 419 3rd Street North. The sale price is \$162,984. (The Diversion Authority has approved the sale and will receive the proceeds of the sale less administration costs.) The City has the option to repurchase the property if the property is not developed.
- The City Commission will be approving by separate action a 5-year Renaissance Zone (RZ) property tax exemption.
- The agreement provides ~1.4 million in Tax Increment Financing (TIF) to the developer plus \$50,000 of administrative costs paid to the City. TIF is for demolition, site cleanup, utilities, adjacent sidewalks and other public improvements. TIF funds cannot be used for land costs with this project. TIF revenue sufficient to pay these costs are estimated to be generated in a 9 year period after the RZ exemption expires. The agreement allows up to 15 years should it take longer. The time period will depend on the City Assessor value of the property, the mill levy rate and participation by Cass County.
- The City will receive \$50,000 for administrative costs at project completion and 5% of the TIF funds (up to a maximum of \$12,500 per year) for ongoing administrative costs.
- The developers' goal is to start construction in the fall of 2022, and is required to start by the end of 2023. The project must be completed by the end of 2025.
- The development must include property to the south at 225 4th Avenue North.
- The development must have a minimum of 102 housing units, at least one parking space per housing unit, a bike storage room for at least 25 bicycles and an elevated outdoor terrace. The first floor of the building will primarily be brick and pre-cast stone.
- The City of Fargo will approve an encroachment agreement to allow exterior parking on the east side of the building between the floodwall and the development property.
- The Block 3 project will provide to the City of Fargo an easement for emergency vehicle access on the north side of the property.

City of Fargo, North Dakota

Tax Increment Financing Program

“But-For” Report

Riverfront



May 13, 2022



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6. Conclusion	7

Purpose

The purpose of this report is to establish and determine the allowable value of the tax increment financing (TIF) for 225 4th Ave N and 419 3rd St N., a development by Kilbourne Group (the "Developer").

PFM first reviewed the application to ensure that appropriate assumptions regarding property value, rent, vacancy, expenses, and debt were used by the Developer. Based on those assumptions, PFM projected a 10-year cash flow, calculating an internal rate of return ("IRR"). We also made sure the Developer followed the City of Fargo's (the "City") Tax Increment Financing Policy (the "Policy") including the allowable costs and the Developer's calculations for determining the amount of allowable subsidy financing. The following report details PFM's analysis and conclusions concerning the viability of the proposed project without the subsidy.



Project

The project being proposed by the Developer includes the development of a 114-unit rental apartment building located at 225 4th Ave N and 419 3rd St N.

The Developer estimates the construction will be completed in the Fall of 2024 with occupancy immediately following. The Developer has requested TIF assistance in the amount of \$1,397,266 to complete the project.



Assistance Request

The Developer is requesting assistance in the form of tax increment financing under the City's Tax Increment Financing Policy. The Policy provides public assistance to a development through tax increment financing for private development. According to the Policy, the maximum TIF assistance is 15 years. Since this project falls within the City's Renaissance Zone, the Developer will only pay property tax on the land value of the property for the first five years.

Eligible TIF Expenditures

Site Preparation/Environmental	\$ 600,000
Public Improvements	350,000
Demolition	<u>449,775</u>
Total Eligible TIF Expenditures	\$ 1,399,775

The Policy limits the TIF assistance to 15% of hard construction costs, including the costs of acquisition. Based on total hard construction costs of \$24,792,424 the Developer can receive up to \$3,718,864. The Developer is requesting \$1,397,266 which is below the maximum allowed.

Land Cost

The Developer states the purchase price to acquire the property for the project is \$1,395,984. Land acquisition is reimbursable under the Policy. The Developer is not requesting to be reimbursed for the land acquisition.



The Policy states that the maximum eligible land costs to be recouped by the Developer should be limited to the lesser of:

- 1.) **The total acquisition cost for the property, provided that the acquisition cost is no more than 150% of the assessor's market value of the property.** The Developer's cost to acquire the property is \$1,395,984. The assessor's market value for the property totals \$4,062,300. The eligible amount for reimbursement is 150% of \$4,062,300 which totals \$6,093,450.
- 2.) **The difference between what was paid by the Developer for the property less the assessor's market value for the land (as opposed to land and buildings).** The current assessor's land value is \$751,000. Based on an acquisition price of \$1,395,984 the maximum reimbursement is \$644,984.

The lesser of the two tests detailed above is \$644,984. The Developer is not requesting reimbursement for land acquisition, which is allowable under the Policy.

Term

The Policy states the length of the term will be limited to 15 years or less. It is estimated the term will be 9 years starting in year 6 following a 5-year Renaissance Zone period.

TIF Estimate

PFM estimates that \$2,843,991 of TIF will be generated over the 9 years following the 5-year renaissance period assuming a 2.00% market growth rate. The TIF request plus the accrued interest during the 5-year Renaissance Zone period totals \$1,729,283. Based on a discount rate of 4.75%, the present value of the estimated TIF cash flow reaches \$1,729,283 in year 14 or in the ninth year after the 5-year Renaissance Zone period.



Project Financing

The Developer is investing 35% equity, or \$10,085,818, and will be privately financing \$18,730,243. The Developer is additionally requesting annual TIF assistance in the total amount of \$1,397,266. The private financing is estimated to be a 25-year loan with an estimated interest rate of 4.00% resulting in an annual principal and interest payment of \$1,185,144. Following stabilization of the project, the developer will add an additional \$4,322,364 to the financing in order to repay equity investment. The new annual loan payment amount would be \$1,453,621. The application states the project will be completed by the Fall of 2024.



Return Analysis

In calculating the internal rate of return, PFM first analyzed the Developer's assumptions including expected monthly rent, vacancy rate, and operating expenses. The Developer is proposing rents of \$1,375 for a one-bedroom unit, \$1,592 for a one-bedroom unit plus, \$1,750 for a two-bedroom unit, \$2,050 for a two-bedroom unit plus, and \$2,100 for a three-bedroom unit. The Developer has proposed a reasonable amount for rent for the current market and location. Annual estimates of operating expenses for the 114-unit rental development were provided, as follows; General and Administrative - \$265,712, Marketing - \$33,818, Repairs and Maintenance - \$86,477, Utilities - \$53,142, Insurance Costs - \$38,649, Centric Management Fee - \$108,701, and Property Taxes - \$304,667. The total expenses are approximately 35% of gross operating income.

The second step in determining the internal rate of return is to determine the earned incremental value of the property over a 10-year period. That value, along with the net operating income cash flows, was used to calculate the internal rate of return. PFM determined that without TIF assistance the Developer would have about a 6.90% internal rate of return based on a 10-year internal rate of return. The Developer would have about a 13.82% internal rate for 10 years if it received the public assistance. A reasonable rate of return for the proposed project is 10% - 15%.

Another measure of feasibility and project viability is the debt coverage ratio. PFM has projected a maximum debt coverage ratio in Year 10 of 1.23x without assistance, with a Year 6 coverage of 1.19x. If the City provided assistance to the project the maximum debt coverage is projected to be 1.45x in Year 10, with a Year 6 coverage of 1.39x.

Using PFM's "without assistance" cash flow as the base scenario, PFM ran sensitivity analyses in order to determine if the project would be likely to occur without public assistance. For the first sensitivity analysis, PFM analyzed how much project funds would have to decrease in order to produce a reasonable internal rate of return. We also looked at how much the rental rates would have to fluctuate in order to achieve a reasonable internal rate of return. Lastly, we looked at a combination of the two scenarios. For the sensitivity analyses, we assumed a reasonable internal rate of return of 13.82%.

Sensitivity Scenario 1 – Project Costs

The project would have to be reduced by \$5,330,915 or 18.50% in order for the project to become viable without assistance. This reduces the amount to be financed from \$18,730,243 to \$15,265,148 and reduces the annual payment from \$1,185,144 to \$965,892 for the loan. It is unlikely that a reduction in project costs of this magnitude would occur at this stage in the development but could still occur.

Sensitivity Scenario 2 – Rental Rates

In order for the project to be viable without public assistance, the rental rates would have to increase by 16.25%. PFM believes this is a high increase to the Developer's proposed rents. This increases annual rental revenue from \$1,613,558 to \$1,851,570. PFM believes the proposed rents are reasonable rental rates and does not believe an increase this large would occur.

Sensitivity Scenario 3 – Combination of Project Costs and Rental Rates

The final scenario looks at both a reduction of project costs and an increase in rental rates. The analysis showed that project costs would have to be reduced by \$2,449,339 or 8.50% and rental rates would have to increase by about 8.75%. Either of these events could occur but may be unlikely to occur together.

The above scenarios show the circumstances in which the project would become viable without public assistance. PFM has determined that the project is unlikely to occur "but-for" the public assistance.



Conclusion

The Developer will bear all the risk involved with the project. The Developer is dependent on a number of factors before and after the project is completed, including project costs, occupancy of the buildings, the rental market, and monthly expenses. The base scenario without assistance along with the sensitivity analyses demonstrates that the project would be unlikely to be feasible without assistance.

PFM has calculated that with public assistance, and based on the assumptions outlined in this report, a 10-year internal rate of return is estimated to be 13.82%. In addition, the coverage ratio in Year 6 is estimated to be 1.39x. The estimated internal rate of return is appropriate given the risk level for this type of project. Based on the information provided to PFM, the calculated internal rate of return and the coverage requirements, PFM concludes the project would not be feasible without public assistance.



DEVELOPER AGREEMENT

By and Between

CITY OF FARGO,

a North Dakota Municipal Corporation

and

GREAT PLAINS BLOCK 3 HOLDINGS, LLC

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DEVELOPER AGREEMENT

THIS AGREEMENT is dated as of June 1, 2022; is by and between the City of Fargo, a North Dakota municipal corporation, and GREAT PLAINS BLOCK 3 HOLDINGS, LLC, a North Dakota limited liability company; and provides as follows:

ARTICLE I

Definitions

Section 1.1. **Definitions.** As used in this Agreement, the following terms have the following respective meanings:

"Agreement" means this Developer Agreement, as the same may be amended.

"Annual Administrative Fee" means an annual administrative fee equal to five percent (5%) of the annual Available Tax Increments received from the County Auditor, subject to a maximum sum of \$12,500 each year, that is to be retained by the City prior to remittance to developer of said increment as payment of the Tax Increment Note, as described in Section 3.3.

"Available Tax Increments" means the Developer Tax Increments minus the Annual Administrative Fee.

"Capitalized Interest" means the portion of the principal amount of the Tax Increment Note that represents the various eligible expenses initially borne by Developer that will be reimbursed by the Tax Increment Note multiplied by an interest rate of Four and 75/100ths Percent (4.75%) per annum, simple interest, multiplied by the number of years, or fraction thereof, between the date each such eligible expense was incurred to the date of the Tax Increment Note.

"Certificate of Completion" means a certification in the form of the certificate attached hereto as Exhibit F and hereby made a part of this Agreement, provided to the Developer pursuant to Section 4.3 of this Agreement.

"City" means the City of Fargo, North Dakota.

"City Parcel" means the real property described in Exhibit B to this Agreement.

"City Parcel Closing" means the closing of the transaction in which the City Parcel is transferred to Developer as contemplated in Section 3.2 of this Agreement.

"City Parcel Closing Date" means the date Developer and City close on the transfer of the City Parcel to Developer as contemplated in Section 3.2 of this Agreement.

"Condemnation Award" means the amount remaining from an award to the Developer for the acquisition of title to and possession of the Development Property, or any material part

thereof, after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such award.

"Final Plans" means the construction grade plans and specifications Developer intends to utilize for construction of the Improvements.

"County" means the County of Cass, North Dakota.

"Developer" means GREAT PLAINS BLOCK 3 HOLDINGS, LLC, a North Dakota limited liability company, or permitted successors or assigns.

"Developer Financing Closing Date" means the date Developer closes with its institutional lender on its financing of the Minimum Improvements. This date may, or may not be, the same date as the City Parcel Closing Date.

"Developer Tax Increments" means the portion of Developer's Taxes which constitutes Tax Increments, or the portion of Tax Increments derived from Developer's Taxes.

"Developer's Property" means Tract A described on Exhibit A to this Agreement.

"Developer's Taxes" means taxes paid with respect to the portions of the Development Property and Improvements completed by the Developer for the fifteenth (15th) Tax Year and earlier Tax Years. Taxes for years prior to the first Tax Year are not included as Developer's Taxes. Taxes for the sixteenth (16th) year following the first Tax Year, or for any subsequent year, are not included as Developer's Taxes.

"Development Costs" means those costs incurred and to be incurred by or on behalf of the Developer in acquiring the Development Property, in completing the Improvements and in financing those undertakings (including all interest charges on borrowed funds).

"Development Plan" means the Developer's development plan for the Development Property approved by the City on May 31, 2022.

"Development Property" means all of the real property (Tract A and Tract B) described in Exhibit A to this Agreement.

"Effective Date" means the date this Agreement is actually executed and delivered.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. sec. 96.01 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. sec. 69.01 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. sec. 1802 et seq., the Toxic Substances Control Act, 15 U.S.C. sec. 2601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. sec. 1251 et seq., the Clean Water Act, 33 U.S.C. sec. 1321 et seq., the Clean Air Act, 42 U.S.C. sec. 7401 et seq., , and any other federal, state, county, municipal, local or other statute, law, ordinance or regulation which may relate to or deal with human health or the environment, all as may be from time to time amended.

"Event of Default" means an event of default defined in Section 9.1 of this Agreement.

"Hazardous Substances" means asbestos, ureaformaldehyde, polychlorinated biphenyls ("PCBs"), nuclear fuel or material, chemical waste, radioactive material, explosives, known carcinogens, petroleum products and by-products and other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law.

"Improvements" means the improvements constructed or to be constructed by the Developer on the Development Property, including all related landscaping, lighting, parking, and other site improvements.

"Maturity Date" means the date that is three (3) years from the Payment Date for the fifteenth Tax Year.

"Minimum Improvements" means the Improvements specifically required of Developer as set out in Section 4.1.

"Mortgage" means any mortgage or security agreement in which the Developer has granted a Mortgage or other security interest in the Development Property, or any portion or parcel thereof, or any improvements constructed thereon, and which is a permitted encumbrance pursuant to the provisions of Article VII; the term "Mortgage" shall specifically include, but shall not be limited to, leases or sale-leaseback arrangements which provide financing for the acquisition of the Development Property, or the construction of the Minimum Improvements.

"Net Proceeds" means any proceeds paid by an insurer to the Developer or City under a policy or policies of insurance required to be provided and maintained by the Developer pursuant to Article V of this Agreement and remaining after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such proceeds.

"Party" means either the Developer or City.

"Parties" means the Developer and City.

"Project" means the project of improvements in and adjacent to the Development Property.

"Specified Event of Default" means an Event of Default for which the City may withhold payment on the Tax Increment Note. Such Event of Default consists of a default of the Developer after the issuance of the Tax Increment Note in the Developer's ongoing covenants set forth in Sections 3.4, 8.1, and 8.2.

"Tax Increment Note" means the City's Tax Increment Revenue Note in the initial principal amount of \$1,447,266.00 or in a lesser initial principal amount that represents reimbursement of eligible costs paid by the Developer as described in this agreement, plus Capitalized Interest at 4.75% per annum, the form of which is attached as Exhibit C to this Agreement, issued when conditions set forth in Section 3.3 are met.

"Tax Increments" means those tax increments which the City shall be entitled to receive and retain, and which the City shall have actually received from Cass County, from time to time from the TIF District pursuant to the Urban Renewal Law.

"Tax Year" is one of a maximum of fifteen (15) successive calendar years, with the first year being the first calendar year that follows the final calendar year in which a Renaissance Zone tax exemption, if any, under Chapter 40-63 of the North Dakota Century Code, is applicable to the Development Property, with the subsequent years being the fourteen (14) subsequent calendar years. The fifteenth (15th) Tax Year, therefore, is the fourteenth (14th) calendar year following the first said year.

"Urban Renewal Law" means the North Dakota Urban Renewal Law, that is, North Dakota Century Code, Chapter 40-58, as the same may be amended.

"TIF District" means the area identified as the "District", under the City's renewal plan approved by the Board of City Commissioners of the City of Fargo on April 5, 2021, as the same may be amended.

"Unavoidable Delays" means any delay outside the control of the Party claiming its occurrence which is the direct result of strikes; other labor troubles; unusually severe or prolonged bad weather; unavailability of materials; unavailability of labor and/or materials caused by a pandemic; Acts of God; fire or other casualty to the Improvements; remediation of contaminants, pollutants or hazardous substances; unforeseen soil conditions, hazardous materials or concealed conditions; litigation (including without limitation bankruptcy proceedings) and which directly results in delays; or acts of any federal, state or local governmental unit which directly result in delays.

ARTICLE II

Representations, Warranties and Covenants

Section 2.1. **Representations, Warranties and Covenants by City.** The City represents and warrants that:

- (a) The City has received the approval of its Board of City Commissioners to enter into and perform its obligations under this Agreement.
- (b) The City herein makes no representation or warranty, either express or implied, as to the Development Property or its condition or the soil conditions thereon or that the Development Property shall be suitable for the Developer's purposes or needs.

Section 2.2. **Representations, Warranties and Covenants by Developer.** The Developer represents and warrants that:

- (a) The Developer is a limited liability company duly organized and in good standing under the laws of the State of North Dakota, is not in violation of any provisions of its operating

agreement or articles of organization or the laws of the State of North Dakota and is authorized to enter into and perform its obligations under this Agreement.

(b) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented or limited by and will not conflict with or result in a breach of any provision or requirement applicable to the Developer or of any provision of any evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound.

(c) The Developer, with respect to its construction, operation and maintenance of the Improvements upon the Development Property, will cause the same to occur in accordance in all material respects with this Agreement and all local, state and federal laws and regulations (including without limitation environmental, zoning, building code and public health laws and regulations and including any relocation requirements under local, state or federal law).

(d) The Developer has received no notice or communication from any local, state or federal official or body that any activities of the Developer respecting the Development Property contemplated by this Agreement, including the construction of the Improvements on the Development Property, may be or will be in violation of any law or regulation.

(e) The Developer will use its reasonable efforts to obtain, in a timely manner, all required permits, licenses and approvals, and to meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Improvements may be lawfully constructed and completed.

(f) To the best knowledge and belief of the Developer, the construction of the Improvements on the Development Property within the reasonably foreseeable future is conditioned on the assistance and benefit to the Developer provided for in this Agreement. The Developer would not undertake the Project without the financing provided by the City pursuant to this Agreement.

(g) The Developer represents and covenants that throughout the term of this Agreement that the tax increment assistance provided under this Agreement will be used by the Developer solely to finance those costs which are eligible costs for reimbursement of a project as defined in the Urban Renewal Law. Developer acknowledges that tax increment assistance does not apply to those costs that are initially borne by the City and reimbursed to the City by Developer and City administrative or TIF fees, including the Annual Administrative Fees, as provided in Section 3.3 of this Agreement.

(h) The Developer will cooperate fully with the City with respect to any litigation commenced by third parties or by the City or both against third parties with respect to the Project.

(i) The Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the Project.

(j) The Developer has not received any notice from any local, state or federal official that the activities of the Developer with respect to the Project may or will be in violation of any Environmental Law or regulation, and the Developer, without any duty of inquiry, is not aware of any state or federal claim filed or planned to be filed by any party relating to any violation of any Environmental Law.

(k) The Developer understands that the City will or may subsidize or encourage the development of other properties in the City, including properties that compete with the Development Property and Improvements, and that such subsidies or encouragements may be more favorable than the terms of this Agreement, and that the City has not represented that development of the Development Property will be favored over the development of other properties.

(l) The Developer will spend enough in construction of the Minimum Improvements, when combined with the value of the Development Property, to generate an estimated market value of \$17,000,000.

(m) The Developer expects that, barring Unavoidable Delays, the Project will be substantially completed by December 31, 2025.

(n) As of the Developer Financing Closing Date, the Developer shall have binding arrangements for all the equity and loan financing necessary to complete the Minimum Improvements.

(o) Within a reasonable time prior to the Contingencies Deadline to allow for City review, Developer shall submit to the City Final Plans evidencing the Minimum Improvements.

(p) As of the Developer Financing Closing Date, Developer shall submit to City reasonable documentation satisfying City that the Developer has firm arrangements for financing construction or acquisition of the Project in an amount sufficient, together with equity commitments, to complete the Project in conformance with the Final Plans, or the City shall receive such other evidence of financial ability as in the reasonable judgment of the City is required.

(q) As of the City Parcel Closing Date, the Developer shall have obtained an opinion from its independent legal counsel in substantially the form set out at Exhibit H, subject to reasonable and customary assumptions, limitations and exclusions.

(r) As of the City Parcel Closing Date, the Developer has marketable record title to Developer's Property free and clear of any encumbrances or lienholders except as provided in Article VII of this Agreement or, to the extent Developer does not have marketable record title, Developer has obtained from the person, firm or entity having such title an agreement [hereinafter referred to as an "Agency Agreement"] authorizing Developer to develop Developer's Property as contemplated by this agreement and authorizing Developer to enter into this Agreement, said Agency Agreement to be in a form approved by the City.

Completion of Improvements; Transfer of City Parcel; Reimbursement of Certain Costs

Section 3.1. **Completion of Improvements by Developer.** Subject to Unavoidable Delays, as provided in Section 4.2, below, the Developer shall have substantially completed the Improvements by December 31, 2025. The Developer's use of the Development Property shall be subject to (a) all of the conditions, covenants, restrictions and limitations imposed by this Agreement and also to (b) building and zoning laws and ordinances and all other local, state and federal laws and regulations.

(a) 2nd Street/4th Ave Streetscape. As an expectation but not as a binding commitment by either Party, the City and Developer agree to work together in identifying an area on the southeast corner of the Project, at least a portion of which may be located within the 2nd Street right-of-way and/or the 4th Avenue North right-of-way for the design and installation of a streetscape by Developer, with cost-allocating arrangements to be determined.

(b) City to Move Generator on City Parcel. There is a power generator located on the City Parcel that once supported Fargo School District functions. The generator shall be deemed to be personal property to be removed by the City (and associated electrical connections safely terminated) prior to the City Parcel Closing and the generator is not the property of the Developer as part of this Agreement.

Section 3.2. **Transfer of the City Parcel.**

(A) Subject to the terms and conditions of this Agreement, City will convey to Developer, and Developer will purchase and accept from City the City Parcel. Except as provided in Section 3.1(b) above, the City shall not be required to remove any improvements from the City Parcel and Developer takes the City Parcel in its as-is condition without any representation or warranty concerning the City Parcel (including, without limitation, the warranties of fitness for a particular purpose, tenantability, habitability and use).

(B) City Parcel Closing. The closing of the sale by the City and purchase by Developer of the City Parcel (the "City Parcel Closing") will occur as soon as reasonably possible after the Contingencies have been waived or satisfied by the City and Developer, as applicable, but not later than fifteen (15) days after the Contingencies Deadline.

(C) Purchase Price. The purchase price for the City Parcel is **One Hundred Sixty Two Thousand Nine Hundred Eighty Four and no/100 DOLLARS (\$162,984)** (the "Purchase Price"), which is payable by Developer to City at the City Parcel Closing.

(D) Title and Survey. Developer shall be responsible for performing any and all title and survey examination or due diligence that Developer deems prudent, at Developer's sole cost and expense. Developer acknowledges and agrees that the City is providing marketable title and otherwise is not providing any representations or warranties as to the condition of title and

expressly waives any claims Developer may have against the City in connection with any title defects. Notwithstanding the foregoing, the City will reasonably cooperate with Developer to address and/or remove any title defects to which the parties agree, including without limitation legal access.

(E) Closing Documents.

(1) City Closing Documents. The City will deliver to Developer at the City Parcel Closing:

- (i) a warranty deed duly executed by the City conveying the City Parcel to Developer in the form agreed to by the Parties; and
- (ii) Encroachment Agreement. – An encroachment agreement suitable to City and Developer pertaining to the following:

(1) East Side-2nd Street ROW Encroachment. The agreement will identify an area within the 2nd Street right-of-way and North of the Easterly extension of the South Boundary of the City Parcel for parking and so that vehicles may use such area for ingress and egress to such parking and the enclosed parking space within the development project and for possible installation of aesthetically-pleasing screening of view of said surface parking area from the south and east of the Project, particularly from the point of view from 2nd Street facing North. For purposes of illustration, only, an exemplar site plan reflecting the surface parking area with the 2nd St. right-of-way is attached hereto as Exhibit G. Agreement to state that encroachment rights of Developer are subject to City right of access for maintenance, repair, replacement of infrastructure for flood mitigation features or 2nd Street right-of-way and underground utility needs and Developer shall be responsible for restoration of damage to paved parking/drive surface of encroachment area caused by City's access at Developer's sole cost.

(2) Canopies overhanging Public Sidewalk. Encroachment Agreement to allow canopies over public sidewalk/right of way at entrances of the Project onto 3rd Street North and at the corner at 3rd Street and 4th Avenue North and the corner at 2nd Street and 4th Avenue North.

(3) Easement Granted to City. Developer to grant easement to north 20-feet of the Developer's Property to City for access to 2nd Street right-of-way (ROW) for retaining wall maintenance, maintenance of any utilities within the 2nd St. ROW and for use by law enforcement, fire, ambulance and other City or other government or public emergency services to the extent needed to satisfy all building code, fire code and any other safety code requirements pertaining to the Project, the form of which

shall be substantially in conformance with Exhibit I. (the "Easement Agreement")

(4) A termination of that certain Encroachment Easement Agreement recorded in the Cass County, North Dakota Recorder's Office as Doc. No. 1472621 in form satisfactory to the title company to remove any exception from coverage related to same from Developer's owner's policy of title insurance.

(5) Such action and/or documentation, if any, as required by the title company to insure legal access over an area generally described as the South 30.5' of vacated 5th Ave. N. lying North of and adjacent to 3rd St. N.

(iii) Option to Repurchase City Parcel Agreement. – The Option to Repurchase City Parcel Agreement as described in Section 4.4.

(iv) Any other items required by this Agreement or reasonably requested by Developer to the Title Company for the City Parcel Closing.

(2) Developer Closing Documents. Developer will deliver to the City at the Closing:

(i) the Purchase Price;

(ii) the Encroachment Agreement, the Easement Agreement and the Option to Repurchase City Parcel Agreement as described in the list of City Closing Documents, above; and

(iv) any other items required by this Agreement or reasonably requested by the Title Company or the City for the City Parcel Closing.

(F) City Parcel Closing Costs, Prorations and Order of Recording.

(1) Closing Costs. Developer will be responsible for all document recording fees (including the deed), fees associated with the transfer or obtaining of licenses and permits required to operate the City Parcel, title examination costs and title insurance premiums and the cost of its ALTA survey. Developer will pay the closing fee and any escrow fees imposed by the Title Company in connection with this transaction.

(2) Taxes and Assessments. Real estate taxes and installments of special assessments for the year prior to the City Parcel Closing (payable the year of the City Parcel Closing) and prior years shall be the responsibility of City. Real estate taxes and installments of special assessments for the year of the City Parcel Closing (payable the year following the City Parcel Closing) shall be prorated between the parties to the City Parcel Closing date, based on the prior year's information if the tax statements for the current year are not yet available. Real estate taxes and installments of special assessments for the year

following the City Parcel Closing (payable the second year following the City Parcel Closing) and subsequent years shall be the responsibility of Developer.

(3) **Income and Expenses.** All income and operating expenses relating to the City Parcel, if any, will be prorated as of the close of business of the day before the City Parcel Closing. The City will be responsible for the expenses and entitled to the revenues accrued or applicable to the period prior to the City Parcel Closing. Developer will be responsible for the expenses and entitled to the revenues accrued or applicable to the day of the City Parcel Closing and thereafter.

(4) **Estimates.** If any amount to be apportioned under (3) cannot be calculated with precision because any item included in such calculation is not then known, such calculation will be made on the basis of reasonable estimates of the City of the items in question. Promptly after any such item becomes known to either Party, such Party will so notify the other and will include in such notice the amount of any required adjustment. If such adjustment requires an additional payment by the City to Developer, the City will make such payment to Developer simultaneously with its giving or within twenty (20) days of its receipt of such notice, as the case may be. If such adjustment requires a refund by Developer to the City, Developer will make such refund simultaneously with its giving or within twenty (20) days after its receipt of such notice, as the case may be.

(5) **Order of Recording.** The Closing Documents will be recorded in the following order:

- (a) Deed from the City to Developer for the City Parcel.
- (b) Option to Repurchase City Parcel Agreement.
- (c) Encroachment Agreement.
- (d) Easement Agreement
- (e) Mortgage, if any, of the Development Property (including the City Parcel) granted by Developer to Developer's lender.

(G) **AS IS.** Except for those covenants, agreements, obligations, representations and warranties specifically in this Agreement: (i) the City makes no representations or warranties regarding the City Parcel; (ii) the City hereby disclaims, and Developer hereby waives, any and all representations or warranties of any kind, express or implied, concerning the City Parcel or any portion thereof, as to its condition, value, compliance with laws, status of permits or approvals, existence or absence of hazardous materials on site, occupancy rate or any other matter of similar or dissimilar nature relating in any way to the City Parcel, including the warranties of fitness for a particular purpose, tenantability, habitability and use; and (iii) Developer otherwise takes the City Parcel "AS IS", "WHERE IS" and "WITH ALL FAULTS".

(H) Contingencies.

(1) Developer's Contingencies. Developer's obligations under this Agreement are subject to satisfaction or waiver by Developer of the following contingencies on or before May 15, 2023 (the "Contingencies Deadline"):

- (a) The City and Developer agreeing, each in their reasonable discretion, that the Final Plans include the Minimum Improvements.
- (b) The City and Developer's agreement (each in its sole discretion) to the final form of the following (collectively, the "Contingent Agreements"): the Encroachment Agreement and Easement Agreement and Option to Repurchase City Parcel Agreement as described in the list of City Closing Documents, above.
- (c) Developer's acquisition of the Developer's Property.
- (d) Developer's approval of all aspects of the City Parcel and the Project (including, without limitation, title, survey, physical condition, costs of intended improvements and financing) and the City and Developer's agreement on any title objections which require cure and the cure that has been undertaken.
- (e) All of the covenants and obligations that the City are required to perform or to comply with pursuant to this Agreement, as applicable, including the delivery of all documents and notices provided for herein, have been performed and complied with in all material respects.

The contingencies set forth in subparagraph (1) of this section are intended for the sole benefit of Developer and may be insisted upon or waived, in whole or in part, by Developer, in its sole discretion.

(2) City's Contingencies. City's obligations under this Agreement are subject to satisfaction or waiver by City of the following contingencies on or before May 15, 2023 (the "Contingencies Deadline"):

- (a) The City and Developer agreeing, each in their reasonable discretion, that the Final Plans include the Minimum Improvements.
- (b) The City and Developer's agreement (each in its sole discretion) to the final form of the Contingent Agreements.
- (c) All of the covenants and obligations that the Developer is required to perform or to comply with pursuant to this Agreement, as applicable, including the delivery of all documents and notices provided for herein, have been performed and complied with in all material respects.

The contingencies set forth in this subparagraph (2) of this section are intended for the sole benefit of City and may be insisted upon or waived, in whole or in part, by City, in its sole discretion.

(3) As set forth more fully below, the mayor of the City without further approval by the Board of City Commissioners of the City, to the extent permitted by law, is authorized to approve the submitted plans for construction and to determine whether the Contingencies of the City are fully satisfied.

Section 3.3. **Reimbursement by City of Certain Costs; Terms of Tax Increment**

Note. The Developer hereby represents to the City that the Developer has incurred and paid and will incur and pay significant Development Costs. The reimbursements, through Available Tax Increments, that establish the principal balance of the Tax Increment Note whose principal and interest are payable to the Developer shall be as follows. The City hereby agrees to defray a portion of the Development Costs up to \$1,447,266.00, comprised of three components:

First Component: Demolition and site cleaning, soil correction and remediation, grading and utility distribution throughout the Development Property This cost is the estimate to demolish the existing structure(s), remove substandard soils and rubble, fill and grade the site plus install new utilities (\$1,047,266.00) that will be borne by the Developer;

Second Component: Public improvements in the City right of way, including utilities disconnect and stub, sidewalk repair and right of way repair and enhancements such as plantings, landscape and furnishings (\$350,000.00).

Third Component: Advance Administrative/TIF Fees. Other Tax Increment costs include the administrative costs (\$50,000.00) for the city of Fargo.

The \$50,000.00 advance administrative fee, set forth above, will be initially paid by Developer to the City at the time of issuance of the Tax Increment Note, but shall be an eligible cost reimbursable through Available Tax Increments along with other eligible costs. In addition, an annual administrative fee equal to five percent (5%), subject to a maximum sum of \$12,500 each year, of the annual increment received from the County Auditor (the "Annual Administrative Fee") shall be retained by the City prior to remittance to developer of said increment as payment of the Tax Increment Note.

If there is a category of expense that is deemed ineligible under the Urban Renewal Law, but there are additional eligible expenses not otherwise reimbursed under this Agreement, then such otherwise non-reimbursed, but eligible, expenses shall be recognized as an eligible expense under this Agreement. If eligible costs in the First, Second or Third Component noted above are less than the maximum amount designated for each Component, then such deficit may be realized through another Component so long as all costs are in fact eligible costs. In addition to the foregoing costs, Developer shall be entitled to reimbursement over and above the foregoing eligible expenses an agreed upon interest rate of Four and 75/100ths Percent (4.75%) Per Annum to be paid to Developer under the Tax Increment Note. All of the said costs, and interest, meet the representation set forth at Section 2.2(g) by issuing the Tax Increment Note, substantially in the form of Exhibit C to this Agreement, subject to the following conditions:

(a) There shall be one (1) Tax Increment Note. The amount of the Tax Increment Note shall be determined by adding the \$1,447,266.00 (or so much thereof as shall be

demonstrated as set forth in Section 3.3(d)) plus a sum equal to Capitalized Interest. The Tax Increment Note shall provide for payments to be made by the City to Developer of Developer's Tax Increment received by the City from the County for the Project for the first Tax Year and for each of fourteen (14) subsequent Tax Years, with payments to be made annually on the Payment Dates, it being further provided that Available Tax Increment exists pertaining to the fifteenth (15th) or earlier Tax Years.

(b) The Tax Increment Note shall be delivered only if no Event of Default shall have occurred and be at the time continuing.

(c) RESERVED.

(d) If the conditions set forth in this Section are met, the Tax Increment Note shall be dated, issued and delivered upon the later of when the Certificate of Completion is delivered and when the Developer has demonstrated in writing to the reasonable satisfaction of the City the amount of eligible costs of the Improvements incurred and paid by Developer. Demonstration of eligible costs of Improvements up to the maximum amount of the Tax Increment Note shall be made pursuant to one or more certifications in form and substance satisfactory to the City that all or a portion of the eligible costs of the Improvements have been incurred, together with lien waivers and evidence satisfactory to the City of the nature and amount of the eligible costs of the Improvements that have been paid by the Developer. Each certification shall demonstrate the specific purpose and amount of the eligible costs of the Improvements and their compliance with the representation set forth at Section 2.2(g). The City's determination of a cost's compliance with the representation set forth at Section 2.2(g) shall, if based on the advice the city attorney's office after consultation with the Developer or its counsel, be conclusive. The delivery of the Tax Increment Note itself constitutes reimbursement of expenditures in an amount equal to the principal amount of the Tax Increment Note; there are no monetary proceeds received by Developer upon delivery of the Tax Increment Note.

(e) Subject to the provisions of the Tax Increment Note, the principal of and interest on the Tax Increment Note shall in the aggregate be payable commencing on May 15th immediately following the first Tax Year, and on May 15th of each year thereafter until the Maturity Date, said May 15th being referred to herein as the "Payment Date" or collectively as "Payment Dates", in the amount described in this subsection. The sole source of funds available for payment of the City's obligations to the Developer under this Section shall be the Tax Increment Note (a non-cash source), and the sole source of funds available for payment of the Tax Increment Note shall be the Available Tax Increments for the first through the fifteenth Tax Years. The amounts otherwise payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City from Tax Years prior to the applicable Payment Date. All payments made on the Tax Increment Note shall be applied first to pay accrued and unpaid interest on the Tax Increment Note and second toward payment of principal. To the extent that the Available Tax Increments are insufficient, through the Maturity Date, to pay all accrued and unpaid interest on and the principal of the Tax Increment Note, said unpaid amounts shall then cease to be any debt or obligation of the City or of the City whatsoever.

(f) The unpaid principal of the Tax Increment Note shall bear interest at Four and 75/100ths Percent (4.75%) per annum from the date of issuance, compounded annually. Interest shall be computed on the basis of a 360-day year consisting of 12 months of 30 days each.

(g) The City expresses no opinion in particular as to whether, or not, the interest income from any such TIF Revenue Note is exempt from federal income taxation, but it is assumed that the Tax Increment Note will be a "taxable" obligation.

(h) The Tax Increment Note shall be a special and limited revenue obligation of the City and not a general obligation of the City, and only Available Tax Increments received by the City shall be used to pay the principal of and interest on the Tax Increment Note

(i) The Tax Increment Note shall be governed by and payable pursuant to the additional terms thereof, as set forth in Exhibit C. In the event of any conflict between the terms of the Tax Increment Note and the terms of this Section 3.3, the terms of the Tax Increment Note shall govern. No payments will be made on the Tax Increment Note during such time as there is a Specified Event of Default that has not been cured by the Developer.

(j) In connection with the issuance of the Tax Increment Note, and as conditions to such issuance, the Developer shall be provided with a private placement memorandum and shall execute a receipt in a form acceptable to the City stating that it has relied on its own determinations in acquiring the Tax Increment Note and not on representations or information provided by the City.

(k) For purposes of this Agreement all project values shall be as valued by the City Assessor.

Section 3.4. **Release and Indemnification Covenants.**

(a) The Developer releases the City and the governing body members, officers, agents, including independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Indemnified Parties") from, covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person for which a claim is made after the City Parcel Closing and prior to the issuance of a Certificate of Completion and occurring at, about or in connection with the Development Property and/or Improvements, or the Developer's undertaking and completion thereof, or resulting from any defect therein, except to the extent such loss, damage or death is caused by the negligence or other wrongful acts or omissions of the Indemnified Parties. This paragraph (a) shall only apply to claims made after the City Parcel Closing and prior to the issuance of a Certificate of Completion.

(b) Except for any misrepresentation or any misconduct or negligence of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever brought after the City Parcel Closing and prior to the issuance of a Certificate of Completion and arising or purportedly

arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Improvements; provided that this indemnification shall not apply to the warranties, representations, covenants or agreements made or obligations undertaken by the City in this Agreement.

(c) The Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Project after the City Parcel Closing and due to any act of negligence of any person, other than any act of misconduct or negligence on the part of any such indemnified party or its officers, agents, servants or employees.

(d) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City.

(e) This Agreement shall not create nor be construed to create any partnership, joint venture, agency, or employment relationship between the Parties.

Section 3.5. **Use of Tax Increments.**

The City receives the Tax Increments generated by the TIF District from the County. The City may use Tax Increments which are not Available Tax Increments for any purpose permitted by law. Available Tax Increments shall be used on each Payment Date for the following purposes in the following order of priority: (a) to make the maximum possible payment on the Tax Increment Note; (b) to pay or reimburse redevelopment costs at or near the Project identified by the City; and then (c) to pay other eligible expenses for other projects that may be approved for the TIF District, from time to time, by the governing body of the City.

Section 3.6. Renaissance Zone. Prior to the execution of this Agreement, the City has taken all appropriate steps to establish approval of the Project as a Renaissance Zone project, with the benefits as provided by N.D.C.C. Chapter 40-63, which benefits include an ad valorem tax exemption of an initial five (5) calendar year period. The first calendar year of such five-year period shall be the calendar year in which the first February 1st occurs immediately following issuance of the Certificate of Completion. By way of clarification and example: (a) if the Certificate of Completion is issued after February 1, 2024, but on or before February 1, 2025, the first calendar year of such five-year period shall be 2025; and (b) if the Certificate of Completion is issued after February 1, 2025, and on or before February 1, 2026, then the first calendar year of such five-year period shall be 2026. The authority for the Renaissance Zone designation to be unilaterally terminated by the City under the terms of this Agreement shall only be in the event that the City is allowed to and has exercised its rights to terminate this Agreement following an Event of Default by Developer for an event that occurs prior to the issuance of Certificate of Completion, in which case ad valorem property taxes and tax increment will be available to the City in accordance with the Urban Renewal Law and other laws. Otherwise, the authority for the Renaissance Zone designation to be terminated shall be limited to applicable North Dakota law.

Construction Of Minimum Improvements

Section 4.1. **Construction of Minimum Improvements.** The Developer agrees that it will cause the Minimum Improvements specified in this Section 4.1 to be constructed on the Development Property. Sufficiently in advance of the Contingencies Deadline to allow for City's review, Developer must submit to City the Final Plans, which shall include the following "Minimum improvements":

- (a) A minimum of 102 apartment dwelling units.
- (b) Building podium level (first floor—ground level) within the Development Property shall accommodate vehicular parking of at least one parking space for each apartment unit as well as indoor bicycle storage room to accommodate at least 25 bicycles.
- (c) The Project shall not include outdoor surface parking within the Development Property along either 4th Avenue or 3rd Street.
- (d) The first floor of the building exterior will be brick and precast stone, brick inlay in precast concrete or precast decorative concrete on the 4th Avenue side, the 3rd Street side, and southern-most 100 feet of the east face of the Project (on the first floor) adjacent to 2nd Street.
- (e) Project to include an elevated terrace with a river view on the level above the parking level.
- (f) The Project must be constructed upon the Development Property, which includes the City Parcel.
- (g) So long as Developer's Final Plans meet the above-described minimum improvement standards, the City may not unreasonably withhold such approval.

The Improvements constructed by the Developer may, and are hereby permitted to and encouraged to, exceed in scope, scale and nature the Minimum Improvements. The Minimum Improvements constitute the lowest (or minimum) amount of Improvements which meet the development required to be provided hereunder by the Developer.

Section 4.2. **Commencement and Completion of Construction.** The Developer shall commence the construction of the existing structure on the Subject Property no later than December 31, 2023, said date to be referred to herein as the "Construction Commencement Deadline"; the Developer having demolished the existing structure(s) on the Development Property prior thereto. Subject to Unavoidable Delays, by December 31, 2025, the Developer shall have completed construction of the Minimum Improvements.

Time lost as a result of Unavoidable Delays shall be added to extend the Construction Commencement Deadline and completion date above beyond such date, a number of days equal to the number of days lost as a result of Unavoidable Delays.

The Developer agrees for itself, and every successor in interest to the Development Property, or any part thereof, that the Developer, and such successors and assigns, shall cause to be promptly begun and diligently prosecuted to completion construction of the Minimum Improvements thereon, and that such construction shall in any event be commenced and completed within the period specified in this Section 4.2. It is intended and agreed that such agreements and covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be, to the fullest extent permitted at law and in equity, binding for the benefit of the City and enforceable by the City against the Developer and its successors and assigns. Until construction of the Minimum Improvements has been completed, the Developer shall make reports to the City, in such detail and at such times as may reasonably be requested by the City, as to the actual progress of the Developer with respect to construction of the Minimum Improvements.

The Developer agrees that it shall permit designated representatives of the City to enter upon the Development Property during the construction of the Minimum Improvements to inspect such construction, after reasonable notice to Developer and at City's risk, to determine compliance with this agreement. This paragraph is not intended to apply to the customary building or code inspections by the City.

Section 4.3. Certificate of Completion. Promptly after completion of the Minimum Improvements in accordance with the provisions of this Agreement, the City will furnish the Developer with a Certificate of Completion, in substantially the form set forth in Exhibit F attached hereto. Such Certificate of Completion shall be a conclusive determination that the Developer has fulfilled the obligations of the Developer, and its successors and assigns, to construct the Minimum Improvements.

If the City shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section 4.3, the City shall, within twenty (20) days after written request by the Developer, provide the Developer with a written statement indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default under the terms of this Agreement, and what measures or acts it will be necessary, in the opinion of the City, for the Developer to take or perform in order to obtain such Certificate of Completion.

Section 4.4. Option to Repurchase City Parcel Agreement. City shall have the option to purchase the City Parcel for the same Purchase Price originally paid by Developer to City, as defined herein, plus one-half of the costs incurred by Developer in the demolition of the existing structure(s), if any, in the event that Developer has not met the Construction Commencement Deadline, all in accordance with a form of option agreement substantially in conformance with **Exhibit "E"**, hereto, (the "**Option to Repurchase City Parcel Agreement**") to be executed at the City Parcel Closing. The Option to Repurchase City Parcel Agreement shall automatically become null and void if Developer timely achieves the Construction Commencement Deadline. If Developer timely achieves the Construction Commencement Deadline and if requested by Developer, City shall execute and deliver to Developer a release of the Option to Repurchase

City Parcel Agreement or such other written affirmation that the Option to Repurchase City Parcel Agreement is null and void as requested by Developer.

ARTICLE V

Insurance And Condemnation

Section 5.1. **Insurance.**

(a) The Developer will provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements and, from time to time at the request of the City, furnish the City with proof of payment of premiums on:

(i) Builder's risk insurance, written on the so-called "Builder's Risk -- Completed Value Basis" in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy;

(ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's Contractor's Policy with limits against bodily injury and property damage of not less than \$500,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); and

(iii) Worker's compensation insurance, with statutory coverage, if applicable.

(b) All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. The Developer will deposit upon the request of the City, but no more often than annually, with the City copies of policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. In lieu of separate policies, the Developer may maintain a single policy, or blanket or umbrella policies, or a combination thereof, which provide the total coverage required herein, in which event the Developer shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

Section 5.2. **Condemnation.** In the event that title to and possession of the Improvements, or any material part thereof, but solely as to the Development Property and Improvements which the Developer retains ownership of, shall be taken in condemnation or by the exercise of the power of eminent domain by any governmental body or other person (except the City) prior to the Maturity Date the Developer shall, with reasonable promptness after such taking, notify the City as to the nature and extent of such taking.

Intentionally left blank.

ARTICLE VII

Mortgage Financing

Section 7.1. Limitation Upon Encumbrance of Property. Prior to the completion of the Minimum Improvements, as certified by the City, neither the Developer nor any successor in interest to the Development Property or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Development Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Development Property, other than:

(a) except for the purpose of securing financing for the Project, Development Property or Improvements, or all of them; and

(b) only if the City is given notice of such Mortgage in accordance with Sections 7.1 and 7.2.

Section 7.2. Notice of Mortgage. The Developer shall provide the City with a copy of the Mortgage and related note prior to the completion of the Minimum Improvements thereon.

Section 7.3. Notice of Default; Copy to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations or covenants under this Agreement for which the remedies of Sections 9.3 and 9.4 are available, the City shall at the same time forward a copy of such notice or demand to each holder of any Mortgage at the last address of such holder shown in the Mortgage.

Section 7.4. Mortgagee's Option to Cure Defaults. After any breach or default referred to in Section 7.3, each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such breach or default (or such breach or default to the extent that it relates to the part of the Development Property covered by its mortgage) and to add the cost thereof to the Mortgage debt and the lien of its Mortgage; provided, however, that if the breach or default is with respect to construction covered by the Mortgage, nothing contained in this Section or any other Section of this Agreement shall be deemed to require such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the work covered by the Mortgage (beyond the extent necessary to conserve or protect the work or construction already made), provided that any such holder shall not devote the Development Property or portion thereof to a use inconsistent with the Development Plan or this Agreement without the agreement of the City.

Section 7.5. City's Option to Cure Default on Mortgage. In the event that the Developer is in default under any Mortgage authorized pursuant to this Article VII, whether or not the holder

of the Mortgage has given the Developer notice of such default, the Developer shall notify the City in writing of:

- (a) the fact of the default;
- (b) the elements of the default; and
- (c) the actions required to cure the default.

If the default is an "Event of Default" under such Mortgage, which shall entitle such holder thereof to foreclose upon the Development Property covered by the Mortgage or any portion thereof, the Developer shall afford the City an opportunity to cure the "Event of Default" to the extent consistent with the Mortgage or permitted by the holder of the Mortgage upon request of the Developer, which request the Developer hereby covenants to make, within the time for cure provided by the Mortgage or within such longer reasonable time period as the holder shall deem appropriate. The City shall have no obligation to cure any such default.

ARTICLE VIII

Prohibitions Against Assignment And Transfer; Indemnification

Section 8.1. Transfer of Property after Issuance of Tax Increment Note. After issuance of the Tax Increment Note, Developer shall be free to transfer the Development Property or any part thereof, but transfer of the Tax Increment Note shall be subject to any restrictions therein.

Section 8.2. Prohibition Against Transfer of Property and Assignment of Agreement Prior to Issuance of Tax Increment Note. The Developer represents and agrees that prior to the issuance of the Tax Increment Note:

(a) Subject to Article VII and Section 8.2(c) of this Agreement, except only by way of security for (and the realization of such security), and only for, the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Development Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under this Agreement, and any other purpose authorized by this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or the relevant portion of the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the City.

(b) Subject to Section 8.2(c), the City shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any such approval that:

(i) Any proposed transferee shall have the same or greater qualifications and financial responsibility of Developer, in the reasonable judgment of the City, necessary and adequate to fulfill the remaining obligations

undertaken in this Agreement by the Developer with respect to the relevant portion of the Development Property.

(ii) Any proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed with respect to the relevant portion of the Development Property all of the remaining obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject (unless the Developer agrees to continue to fulfill those obligations, in which case the preceding provisions of this Section 8.2(b)(ii) shall not apply); provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City) deprive the City of any rights or remedies or controls with respect to the Development Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the City would have had, had there been no such transfer or change. In the absence of specific written approval by the City to the contrary, no such transfer or approval by the City thereof shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

(iii) There shall be submitted to the City for review and prior written approval all pertinent instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article VIII.

Section 8.3. Approvals. Any approval of a transfer of interest in the Developer, this Agreement, or the Development Property or of a release of the Developer from its obligations hereunder required to be given by the City under this Article VIII may be denied only in the event that the City reasonably determines that the ability of the Developer to perform its obligations under this Agreement and its statutory duty, as owner, to pay ad valorem real property taxes assessed with respect to the Development Property, or any part thereof, or the overall financial security provided to the City under the terms of this Agreement, or the likelihood of the Minimum Improvements being successfully constructed and operated pursuant

to the terms of this Agreement, will be materially impaired by the action for which approval is sought.

ARTICLE IX

Events of Default

Section 9.1. **Events of Default Defined.** The following are Events of Default under this Agreement:

- (a) There shall have occurred a failure in the observance or performance in any material respect of any covenant, condition, obligation or agreement to be observed or performed under this Agreement.
- (b) If any representation or warranty made by a party herein shall at any time prove to have been incorrect in any material respect as of the time made.
- (c) If the Minimum Improvements are not substantially completed by December 31, 2025, as such time may be extended by Unavoidable Delays.
- (d) If the holder of any mortgage on the Development Property or any portion thereof shall commence a legal action on the secured indebtedness or a foreclosure of its mortgage.
- (e) If a party shall breach any warranties, representations, covenants, agreements, obligations or other provisions of this Agreement not referred to in the foregoing provisions of this Section 9.1.
- (f) The filing by the Developer of a voluntary petition in bankruptcy or the adjudication of the Developer as a bankrupt, the insolvency of the Developer or the filing by the Developer of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation resolution or similar relief under any present or future federal, state or other statutes, laws or regulations relating to bankruptcy, insolvency or other relief for debtors, or if the Developer seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator for itself or its property, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due.
- (g) If the Developer shall not have available, and be able to demonstrate to the reasonable satisfaction of the City, sufficient funds to complete the Minimum Improvements and pay all costs thereof.

An Event of Default shall also include any occurrence which would with the passage of time or giving of notice become an Event of Default as defined hereinabove.

Section 9.2. **Remedies on Default.** Whenever any Event of Default occurs, in addition to all other remedies available to the non-defaulting party at law or in equity, the non-defaulting party (1) may with notice suspend its performance (other than the payment of the Tax Increment Note,

except as provided below for a Specified Event of Default) under this Agreement until it receives assurances from the defaulting party, deemed adequate by the non-defaulting party, that the defaulting party has cured its default and will continue its performance under this Agreement, and (2) may, after provision of sixty (60) days written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said sixty (60) days, or, if the Event of Default cannot be cured within sixty (60) days, the defaulting party does not provide assurances to the non-defaulting party reasonably satisfactory to the non-defaulting party that the Event of Default will be cured as soon as reasonably possible, terminate this Agreement, without further obligation whatsoever hereunder to the defaulting party.

As a remedy for an Event of Default by Developer:

- (a) The City may suspend or terminate payments on the Tax Increment Note, if the Event of Default is a Specified Event of Default.
- (b) The City may withhold a Certificate of Completion.
- (c) The City may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, to recover any damages or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the either Party is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 9.4. No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement should be breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.5. Agreement to Pay Attorneys' Fees and Expenses. Whenever any Event of Default occurs and has not been cured within sixty (60) days and the non-defaulting party shall employ attorneys or incur other expenses for the enforcement, performance or observance of any obligations or agreement on the part of the defaulting party contained herein, or for the identification and/or pursuit of any remedies or possible workouts of such default, the defaulting party agrees that it shall, on demand therefor, pay to the non-defaulting party the reasonable fees of such attorneys and such other reasonable expenses so incurred by the non-defaulting party. If an Event of Default cannot be cured within sixty (60) days, but the defaulting party has provided assurances to the non-defaulting party reasonably satisfactory to the non-defaulting party that the Event of Default will be cured as soon as reasonably possible (as provided in Section 9.2), and

the defaulting party does so cure said Event of Default in the manner as assured to the non-defaulting party, the Event of Default shall be deemed to have been cured within said sixty (60) days for purposes of this Section.

ARTICLE X

Additional Provisions

Section 10.1. **Titles of Articles and Sections.** Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions hereof.

Section 10.2. **Notices and Demands.** Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by either Party to the other shall be sufficiently given or delivered if sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and,

(a) in the case of the Developer, to GREAT PLAINS BLOCK 3 HOLDINGS, LLC, ATTN: President, 210 Broadway N., Suite 300, Fargo, ND 58102.

(b) in the case of the City, to the City at 225 4th Street North, North Dakota 58102, Attention: Director of Strategic Planning and Research AND to the City at 225 North 4th Street, Fargo, North Dakota 58102, Attention: City Auditor;

or at such other address with respect to either such Party as that Party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 10.3. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one, complete Agreement. A copy of this Agreement delivered as or by .pdf, facsimile or other electronic means containing a party's signature shall be deemed such party's original, binding signature.

Section 10.4. **Law Governing.** The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Dakota.

To the extent the ability of the City to perform any obligations under this agreement is impaired or limited by modifications in North Dakota law, as established either by the legislature or the courts, this agreement shall be interpreted and construed to maximize the fulfillment of such obligations under the law; however, no breach of this agreement may be deemed to occur as a result of such impairment or limitation

Section 10.5. **No Filing of Agreement.** The Parties agree that this Agreement shall not be filed against the Development Property, and each Party agrees that if it shall inadvertently cause or suffer this Agreement to be so filed, it will take such actions as may be necessary to remove, satisfy and render ineffective any such filing.

Section 10.6. **Modification.** If the Developer is requested by the holder of a Mortgage or by a prospective holder of a prospective Mortgage to amend or supplement this Agreement in any manner whatsoever, the City will, in good faith, consider the request with a view to granting the same unless the City, in its reasonable judgment, concludes that such modification is not in the public interest, or will significantly and undesirably weaken the financial security provided to the interests of the City by the terms and provisions of this Agreement.

Section 10.7. **Legal Opinions.** Upon execution of this Agreement, each party shall, upon request of the other parties, supply the other parties with an opinion of its legal counsel to the effect that this Agreement is legally issued or executed by, and valid and binding upon, such party, and enforceable in accordance with its terms.

Section 10.8. **Approvals; Officer Action.** Wherever in this Agreement the consent or approval of the City or Developer is required or requested, such consent or approval shall not be unreasonably withheld or unduly delayed (except to the extent that, as a remedy upon the occurrence of an Event of Default, the non-defaulting party is entitled to withhold its performance). Any approval, execution of documents, or other action to be taken by the City pursuant to this Agreement or for the purpose of determining sufficient performance by the Developer under this Agreement may be made, executed or taken by the mayor of the City without further approval by the Board of City Commissioners of the City, to the extent permitted by law, including the authority to approve the submitted plans for construction and to determine whether the Contingencies of the City are fully satisfied, as referenced above. The mayor may, but shall not be required to, consult with other City staff with respect to such matters.

ARTICLE XI

Termination of Agreement; Expiration

Section 11.1. **City's Option to Terminate.** As provided and under the conditions specified in Section 9.2, the City may terminate this Agreement if an Event of Default shall have occurred hereunder and be continuing beyond applicable cure periods. Nothing in that or in this Section shall affect the City's right, should the City not so elect to terminate this Agreement and as recourse against the Developer, to insist on performance hereunder by the Developer.

Section 11.2. **Expiration.** This Agreement shall expire when the Tax Increment Note is issued; provided, however, this Agreement shall still be used thereafter for definitions and context purposes to the extent required for reference purposes under the Tax Increment Note.

Section 11.3. **Effect of Termination or Expiration.** No termination or expiration of this Agreement pursuant to the terms hereof shall terminate (i) any rights or remedies of the non-defaulting party arising hereunder due to an Event of Default occurring prior to such termination or expiration or (ii) the provisions of Sections 3.4 (entitled "Release and Indemnification Covenants") and 9.5 (entitled "Agreement to Pay Attorneys' Fees and Expenses") hereof.

Section 11.4. **No Third Party Beneficiaries.** There shall, as against the City, be no third-party beneficiaries to this Agreement. More specifically, the City enters into this Agreement, and intends that the consummation of the City obligations contemplated hereby shall be, for the sole

and exclusive benefit of the Developer, and notwithstanding the fact that any other "persons" may ultimately participate in or have an interest in the Improvements, the City does not intend that any party other than the Developer shall have, as alleged third party beneficiary or otherwise, any rights or interests hereunder as against the City, and no such other party shall have standing to complain of the City's exercise of, or alleged failure to exercise, its rights and obligations, or of the City's performance or alleged lack thereof, under this Agreement. Notwithstanding anything in this Section to the contrary, permitted successors and assigns shall not be deemed a "third party" for the purposes of this Section, and such permitted successors and assigns shall inure to all of the benefits of Developer and be bound by all of Developer's obligations.

[The remainder of this page intentionally left blank – signature pages follow]

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed by their duly authorized representatives.

CITY OF FARGO, NORTH DAKOTA

(SEAL)

By _____
Timothy J. Mahoney, M.D., its Mayor

ATTEST:

By _____
Steven Sprague, City Auditor

STATE OF NORTH DAKOTA)
)ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this ____ day of June, 2022, by Timothy J. Mahoney, M.D., and Steven Sprague, the Mayor and City Auditor, respectively, of the City of Fargo, North Dakota, on behalf of said City.


Notary Public

This document drafted by:

Erik R. Johnson
Assistant City Attorney
Fargo, ND
ejohnson@lawfargo.com
701-371-6850

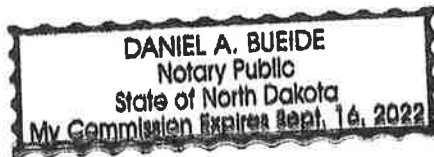
Execution Page to Developer Agreement between the above-named Party and GREAT PLAINS
BLOCK 3 HOLDINGS, LLC

GREAT PLAINS BLOCK 3 HOLDINGS, LLC

By 
Bill Rothman, Vice President

STATE OF NORTH DAKOTA)
)ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this 26th day of May, 2022, by
Bill Rothman, the Vice President of GREAT PLAINS BLOCK 3 HOLDINGS, LLC, a North
Dakota limited liability company, on behalf of said company.




Notary Public

EXHIBIT A**LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY**

The Development Property consists of the following properties located in the City of Fargo, Cass County, North Dakota:

TRACT A

That part of vacated Fifth Avenue North (Dedicated as Fourth Avenue), that part of a vacated alley, and all of Lot 8, all in Block 24, KEENEY AND DEVITT'S SECOND ADDITION, that part of Block 24 of KEENEY'S SUB-DIVISION OF CERTAIN LOTS IN PORTIONS OF BLOCKS NOS. 32 – 30 – 24 – 25 – 26 – 20 AND 19 IN KEENEY & DEVITT'S SECOND ADDITION, and that part of a vacated alley and Lot 1, Block 3, NORTH DAKOTA R1 URBAN RENEWAL ADDITION, all in the City of Fargo, said plats being on file and of record in the office of the Recorder, Cass County, North Dakota, described as follows:

Beginning at the northwest corner of said Lot 8, Block 24, said corner also being on the southerly right-of-way line of said Fifth Avenue North (Dedicated as Fourth Avenue); thence North 02 degrees 53 minutes 01 second West along the northerly extension of the westerly line of said Lot 8 a distance of 30.50 feet to a point on a line lying 30.00 feet southerly of, as measured at a right angle to, and parallel with, the centerline of the Burlington Northern Santa Fe Railway company's mainline track; thence North 86 degrees 54 minutes 11 seconds East along said parallel line a distance of 241.52 feet to the westerly right-of-way line of Second Street North, as shown on the DEDICATION PLAT OF SECOND STREET NORTH, said plat being on file and of record in the Cass County Recorder's office; thence South 09 degrees 24 minutes 11 seconds West along said westerly right-of-way line a distance of 185.68 feet to the south line of said Lot 1, Block 3; thence South 87 degrees 07 minutes 40 seconds West along the south line of said Lot 1, Block 3 a distance of 202.01 feet to the southwest corner of said Lot 1, Block 3; thence North 02 degrees 53 minutes 01 second West along the west line of said Lot 1, Block 3, and along the west line of said Block 24, a distance of 150.00 feet to the point of beginning. The above-described tract contains 40,120 square feet and is subject to all easements, restrictions, reservations, and rights-of-way of record.

TRACT B

LOT TWO, IN BLOCK THREE, NORTH DAKOTA R-1 URBAN RENEWAL ADDITION TO THE CITY OF FARGO, SITUATE IN THE COUNTY OF CASS AND THE STATE OF NORTH DAKOTA; EXCEPTING THEREFROM THE FOLLOWING DESCRIBED TRACT: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT TWO; THENCE SOUTH 87°07'40" WEST, ALONG THE NORTHERLY LINE OF SAID LOT TWO, FOR A DISTANCE OF 84.55 FEET; THENCE SOUTH 32°28'16" WEST FOR A DISTANCE OF 102.27 FEET; THENCE SOUTH 57°31'44" EAST FOR A DISTANCE OF 25.00 FEET; THENCE SOUTH 32°28'16" WEST FOR A DISTANCE OF 63.71 FEET, MORE OR LESS, TO A POINT OF INTERSECTION WITH THE SOUTHERLY LINE OF SAID LOT TWO; THENCE NORTH 87°04'06" EAST, ALONG THE SOUTHERLY LINE OF SAID LOT TWO, FOR A DISTANCE OF 144.53 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID LOT TWO; THENCE NORTHERLY, ALONG THE EASTERLY LINE OF SAID LOT

TWO, FOR A DISTANCE OF 151 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

The current property addresses are 419 3rd St. N and 225 4th Ave. N, Fargo, ND 58102, respectively.

LEGAL DESCRIPTION OF CITY PARCEL

The City Parcel consists of the following property or properties located in the City of Fargo, Cass County, North Dakota:

TRACT A

That part of vacated Fifth Avenue North (Dedicated as Fourth Avenue), that part of a vacated alley, and all of Lot 8, all in Block 24, KEENEY AND DEVITT'S SECOND ADDITION, that part of Block 24 of KEENEY'S SUB-DIVISION OF CERTAIN LOTS IN PORTIONS OF BLOCKS NOS. 32 – 30 – 24 – 25 – 26 – 20 AND 19 IN KEENEY & DEVITT'S SECOND ADDITION, and that part of a vacated alley and Lot 1, Block 3, NORTH DAKOTA R1 URBAN RENEWAL ADDITION, all in the City of Fargo, said plats being on file and of record in the office of the Recorder, Cass County, North Dakota, described as follows:

Beginning at the northwest corner of said Lot 8, Block 24, said corner also being on the southerly right-of-way line of said Fifth Avenue North (Dedicated as Fourth Avenue); thence North 02 degrees 53 minutes 01 second West along the northerly extension of the westerly line of said Lot 8 a distance of 30.50 feet to a point on a line lying 30.00 feet southerly of, as measured at a right angle to, and parallel with, the centerline of the Burlington Northern Santa Fe Railway company's mainline track; thence North 86 degrees 54 minutes 11 seconds East along said parallel line a distance of 241.52 feet to the westerly right-of-way line of Second Street North, as shown on the DEDICATION PLAT OF SECOND STREET NORTH, said plat being on file and of record in the Cass County Recorder's office; thence South 09 degrees 24 minutes 11 seconds West along said westerly right-of-way line a distance of 185.68 feet to the south line of said Lot 1, Block 3; thence South 87 degrees 07 minutes 40 seconds West along the south line of said Lot 1, Block 3 a distance of 202.01 feet to the southwest corner of said Lot 1, Block 3; thence North 02 degrees 53 minutes 01 second West along the west line of said Lot 1, Block 3, and along the west line of said Block 24, a distance of 150.00 feet to the point of beginning. The above-described tract contains 40,120 square feet and is subject to all easements, restrictions, reservations, and rights-of-way of record.

The current property address is 419 3rd St. N, Fargo, ND 58102.

EXHIBIT C**FORM OF TAX INCREMENT NOTE**

No. R-__

\$1,__,__,__.

UNITED STATES OF AMERICA
 STATE OF NORTH DAKOTA
 CASS COUNTY
 CITY OF FARGO

\$_____ TAX INCREMENT
 REVENUE NOTE OF 20____ [i.e. year of issuance]
 (TAX INCREMENT DISTRICT 2022-0____ PROJECT)

KNOW ALL PERSONS BY THESE PRESENTS that the City of Fargo, Cass County, North Dakota (the "City"), certifies that it is indebted and for value received promises to pay to GREAT PLAINS BLOCK 3 HOLDINGS, LLC, a North Dakota limited liability company (the "Developer"), or the registered assign, the principal sum of ONE MILLION

_____ and no/100 Dollars (\$1,__,__,__.00),

[[Note: principal sum to include validated eligible expenses of Developer from Section 3.3, including City Administrative Fee (\$50,000) and Capitalized Interest amount]] an amount issued in reimbursement of eligible costs paid by the Developer, unless due sooner by redemption or early payment, on the Maturity Date; but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided; and to pay interest on the unpaid principal amount of this Note at the rate of interest of Four and 75/100ths Percent (**4.75%**) per annum, compounded annually. Interest shall accrue from the date of this Note on the amount issued and shall be computed on the basis of a 360-day year consisting of 12 30-day months. This Note is the "Tax Increment Note" (the "Note") described and defined in that certain Developer Agreement, dated as of June 1, 2022 (as the same may be amended from time to time, the "Developer Agreement"), by and between the City and GREAT PLAINS BLOCK 3 HOLDINGS, LLC, a North Dakota limited liability company, as the initial Developer under the Developer Agreement. Each capitalized term which is used but not otherwise defined in this Note shall have the meaning given to that term in the Developer Agreement or in the resolution authorizing the issuance of this Note. Principal and interest are payable at such address as shall be designated in writing by GREAT PLAINS BLOCK 3 HOLDINGS, LLC, or other registered holder of this Note, in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts.

Payment Dates. Subject to the terms hereof, the principal of and interest on the Tax Increment Note shall in the aggregate be payable commencing on the later of (a) May 15th immediately following the date of issuance of the Tax Increment Note and (b) May 15th of the second calendar year following the final year in which a Renaissance Zone tax exemption, under Chapter 40-63 of the North Dakota Century Code, if any, is applicable to the Development

Property and on May 15th of each year thereafter until the Maturity Date, said May 15th dates being referred to herein as a "Payment Date" or collectively as "Payment Dates".

Payment Amounts. On each Payment Date (or, if not a business day of the City, the first business day thereafter) the City shall pay by check or draft mailed to the person that was the Registered Owner of the Note at the close of the last business day of the City preceding such Payment Date an amount as follows: (a) the first payment on the Tax Increment Note, to become due and payable on the first Payment Date, shall be limited to all the Available Tax Increments received to said date by the City on the Project for the first Tax Year and (b) for all payments after said first payment on the Tax Increment Note, the amounts payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City (and not previously paid to the Registered Owner and applied by City as an Annual Administrative Fee) for the first and any subsequent Tax Year. All payments made on the Tax Increment Note shall be applied first to pay accrued and unpaid interest on the Tax Increment Note and second toward payment of principal. To the extent that the Available Tax Increments are insufficient, through the Maturity Date, to pay all accrued and unpaid interest on and the principal of the Tax Increment Note, said unpaid amounts shall then cease to be any debt or obligation of the City or of the City whatsoever. In no event shall City be obligated to remit payment of principal in excess of the aggregate amount of the unpaid principal of the Note. The City shall have the option at any time to prepay in whole or in part the principal amount of this Note at par plus accrued interest.

Redemption. In addition to the amounts of principal required to be paid by the City as hereinabove set forth, the City shall have the right to prepay on any date the entire principal amount hereof then remaining unpaid, or such lesser portion thereof as it may determine upon, in multiples of \$1,000, at par plus accrued interest. Notice of any such optional prepayment shall be given prior to the prepayment date by mailing to the registered owner of this Note a notice fixing such prepayment date and the amount of principal to be prepaid.

No Payment Upon Default. No payments will be made on this Note during such time as there is a Specified Event of Default under the Developer Agreement which has not been cured by the Developer.

Lack of Protective Covenants. The City of Fargo, North Dakota (the "City"), has not covenanted to endeavor in any fashion to cause Tax Increments to be sufficient to generate Available Tax Increments sufficient to pay this Note, nor have they covenanted to take actions under the Developer Agreement with such sufficiency as a goal.

Sufficiency of Revenues. The City makes no representation or covenant, express or implied, that the revenues described herein will be sufficient to pay, in whole or in part, the amounts which are or may otherwise become due and payable hereunder. Any amounts which have not become due and payable on this Note on or before the Maturity Date shall no longer be payable, as if this Note had ceased to be any debt or obligation of the City or of the City whatsoever.

Issuance; Purpose; Special Limited Obligation. This Note is in the aggregate principal amount of \$_____ [\$1,447,266 plus Capitalized Interest] (the "Note"), which Note has been issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota including North Dakota Century Code Chapter 40-58, for the purpose of providing money to finance certain eligible costs within the City's Urban Renewal District 2022-0___, specifically the costs identified in Section 3.3 of the Developer Agreement. The Notes are payable out of the Tax Increment Revenue Note of 2022-0___ Fund of the City, to which have been pledged amounts representing Available Tax Increments to be received by the City from the City's 2022-0___ Tax Increment District in the City. This Note is not any obligation of any kind whatsoever of any public body, except that this Note is a special and limited revenue obligation but not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications and limitations stated or referenced herein. Neither the full faith and credit nor the taxing powers of the City or of the City are pledged to or available for the payment of the principal of or interest on this Note, and no property or other asset of the City or of the City, save and except the above referenced Available Tax Increments, is or shall constitute a source of payment of the City's obligations hereunder.

Limitation on Transfer. This Note may only be transferred to a person who is (1) a successor of GREAT PLAINS BLOCK 3 HOLDINGS, LLC, by reorganization, merger or acquisition, (2) a member of GREAT PLAINS BLOCK 3 HOLDINGS, LLC, (3) a related person to such member or successor, (4) a "qualified institutional buyer" as defined in Rule 144A promulgated under the federal Securities Act of 1933, or (5) an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) promulgated under the federal Securities Act of 1933. The City shall not register any transfer of this Note unless (i) a registered owner's prospective transferee delivers a representation letter in form satisfactory to the City verifying that the transferee is a "qualified institutional buyer"; or (ii) such transferee is an "accredited investor" which has delivered a representation letter in form satisfactory to the City; or (iii) the prospective transferee demonstrates to the satisfaction of the City that it is the successor, partner or related person to GREAT PLAINS BLOCK 3 HOLDINGS, LLC, noted above.

Any registered owner desiring to effect a transfer shall, and does hereby, agree to indemnify the City against any liability, cost or expense (including attorneys' fees) that may result if the transfer is not so made.

Registration; Transfer. This Note shall be registered in the name of the payee on the books of the City by presenting this Note for registration to the officer of the City performing the functions of the Treasurer, who will endorse his or her name and note the date of registration opposite the name of the payee in the certificate of registration on the reverse side hereof. Thereafter this Note may be transferred to a bona fide purchaser who is a permitted transferee only by delivery with an assignment duly executed by the registered owner or his, her or its legal representative, and the City may treat the registered owner as the person exclusively entitled to exercise all the rights and powers of an owner until this Note is presented with such assignment for registration of transfer, accompanied by assurance of the nature provided by law that the assignment is genuine and effective, and until such transfer is registered on said books and noted hereon by the Treasurer of the City.

Developer Agreement. **The terms and conditions of the Developer Agreement are incorporated herein by reference and made a part hereof.** The Developer Agreement may be attached to this Note, and shall be attached to this Note if the holder of this Note is any person other than GREAT PLAINS BLOCK 3 HOLDINGS, LLC. No payments will be made on this Note during such time as there is a Specified Event of Default under the Developer Agreement which has not been cured by the Developer.

Taxable Obligation. This Note is intended to bear interest that is included in the gross income of the owner.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and laws of the State of North Dakota to be done, to happen and to be performed, precedent to and in the issuance of this Note, have been done, have happened and have been performed, in regular and due form, time and manner as required by law; and that this Note, together with all other debts of the City outstanding on the date hereof, being the date of its actual issuance and delivery, does not exceed any constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF, the City of Fargo, Cass County, North Dakota, by its Board of City Commissioners has caused this Note to be executed on its behalf by the signature of its Mayor and attested by the signature of the City Auditor, all as of _____, 20____.

CITY OF FARGO, CASS COUNTY, NORTH
DAKOTA

By: _____
Timothy J. Mahoney, M.D., its Mayor

ATTEST:

Steven Sprague, City Auditor

(SEAL)

CERTIFICATE OF REGISTRATION

The transfer of ownership of the principal amount of the attached Note may be made only by the registered owner or his, her or its legal representative last noted below.

<u>DATE OF REGISTRATION</u>	<u>REGISTERED OWNER</u>	<u>SIGNATURE OF AUTHORITY'S TREASURER</u>
	GREAT PLAINS BLOCK 3 HOLDINGS, LLC	
_____, 20____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

EXHIBIT D

FORM OF ENCROACHMENT AGREEMENT

ENCROACHMENT AGREEMENT**(ADJACENT TO GREAT PLAINS BLOCK 3 HOLDINGS, LLC, PROPERTY)**

This **ENCROACHMENT AGREEMENT** (the "Agreement"), is made and entered into as of the effective date below by and between the **CITY OF FARGO**, a North Dakota municipal corporation (hereinafter "City") and **GREAT PLAINS BLOCK 3 HOLDINGS, LLC**, a North Dakota limited liability company (referred to as "Owner")

WITNESSETH:

WHEREAS, the City and Owner entered into a Developer Agreement with an effective date of June 1, 2022, (the "Developer Agreement"), which contemplated the development, design and construction of the "Project" by the Owner as defined in said Developer Agreement; and,

WHEREAS, the Project is located on that certain real property (Tract A and Tract B) described in **Exhibit A** to this Agreement (the "Development Property"); and,

WHEREAS, the envelope for construction, use and operation of the Project extends into a portion of the right-of-way adjacent to the Development Property on 2nd Street North, 3rd Street North and 4th Avenue North, in Fargo; and,

WHEREAS, to the extent said Project elements extend into the public right-of-way, the parties wish to enter into this Agreement memorializing the terms by which said encroachments are to be allowed;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions contained herein, it is hereby agreed by and between the parties as follows:

1. **ENCROACHMENT OF PROJECT ONTO R-O-W.** City hereby grants Owner and its successors and assigns, for the benefit of the Development Property, the right to encroach upon that part of the 2nd Street North, 3rd Street North and 4th Avenue North rights-of-way described as follows:

A. Within that part of the 2nd St. right-of-way described and depicted on attached Exhibit B (the "2nd Encroachment Area"), Owner shall be entitled to (collectively, the "2nd Permitted Encroachments"): (i) install paving and striping and use such are for parking, a drive aisle and for ingress and egress to its enclosed parking; and (ii) install aesthetically-pleasing screening to obstruct the view of surface parking from the south and east of the Project, particularly from the point of view from 2nd Street facing North.

B. Within those portions of the 3rd St. North and 4th Ave. North rights of way depicted on attached Exhibit B (the “3rd/4th Encroachment Area”; the 3rd/4th Encroachment Area and the 2nd Encroachment Area, collectively, the “Encroachment Areas”), Owner shall be entitled to install building entrance canopies overhanging a portion of the public sidewalks (the 3rd/4th Permitted Encroachments; the 3rd/4th Permitted Encroachments and the 2nd Permitted Encroachments, collectively, the “Permitted Encroachments”). Owner understands and agrees that no signs are currently permitted within the Encroachment Areas by this Encroachment Agreement and that if (and only if) fully and finally approved by City through one or more processes provided in City’s Land Development Code or through another City administrative procedure under, and subject to, the regular criteria and standards of review therefore, shall any such approved sign be a Permitted Encroachment. Owner shall provide City final design and record drawings (“as built”) in AutoCAD and pdf format of all Permitted Encroachments within 30 days following the installation of any of the same. City shall engage a competent licensed Professional Engineer to create and draft record drawings if Owner has not submitted by this deadline, and the costs thereof shall be billed to and paid by the Owner.

2. The rights granted by City to Owner under this Agreement are subject to the following terms and conditions.

A. A travelable sidewalk must be open at all times. There should never be an event or other obstruction that doesn’t allow customary pedestrian travel. Said travel route must be compliant with the Americans with Disability Act (“ADA”) and Public Rights-of-Way Access Guidelines <https://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines> (“PROWAG”) as the same is amended from time to time. The requirement to maintain compliance shall be ongoing and to the extent that changes or improvements must be incorporated into the Encroachment Areas. Owner shall be responsible for such compliance, changes or improvements, including without limitation, with respect to unallowed obstructions, the width and shape of passage route and required curb line buffers.

B. The grant of this encroachment will not be interpreted to authorize the sale or consumption of alcoholic beverages on public right of way that is otherwise prohibited by law.

C. Owner acknowledges that portions of the Encroachment Areas serve as a sidewalk for public travel and Owner will be responsible for commercially reasonable maintenance, repair, and replacement of the encroachment features, and shall be responsible for ADA and PROWAG compliance with respect any Permitted Encroachments. If repairs are not made by Owner in a timely and appropriate manner, as reasonably determined by City, City shall repair or replace

the offending encroachment feature to City Standards and Specifications, and the cost thereof shall be assessed to the Development Property. City shall give Owner notice of any deficiency if the same is made known to City by report or observation, and City shall provide a reasonable time to Owner to rectify the concern. In the event of an emergency as determined by City, if repairs are not immediately accomplished by Owner, City shall repair or replace in accordance with City Standards and Specifications.

D. With respect to the removal or demolition of any sidewalk to accommodate the design, installation or repair of the Permitted Encroachments, Owner will pay all costs for such removal, demolition, design and reconstruction and Owner will also pay the reasonable out-of-pocket costs of City, if reasonably necessary, to provide supervision and oversight of such removal and replacement of the sidewalk.

E. Aesthetics. Owner shall be responsible for the aesthetic features of the Permitted Encroachments. Complaints made to City, if any, shall be communicated to Owner and addressed by Owner in a timely and appropriate manner.

F. Owner shall have sole responsibility for the electrical components of the Permitted Encroachments, including installation, locating, any and all service charges, and repair and maintenance of the receptacles. The contract with the electrical service provider shall be in Owner's name; City shall have no responsibility for the power provided to the Project. Owner shall ensure no power cords are located in the pedestrian travel path.

G. Owner shall be provided a Right of Way Occupancy Permit from the City for any underground Permitted Encroachments installed in the ROW, at no cost to Owner, and Owner shall comply with any and all requirements of ND One Call with respect thereto and be responsible for all costs associated with ND One Call requirements, including but not limited to electrical, gas, irrigation water service and Fire Hydrant water service.

3. Owner will directly contract for engineering and construction services for the construction and installation of the elements of the Permitted Encroachments within the Encroachment Areas. Owner will make direct payment for the services. Owner's contractor(s) and engineer (s) must be licensed under the laws of the State of North Dakota, and otherwise be responsible contractors and engineers as reasonably determined by City.

4. Owner shall be responsible for compliance with all City construction standards and specifications, including but not limited to compliance with the City of Fargo Requirements for Engineering Services on Public Construction Projects, dated April 2015, as modified by the City Engineer (the "City Standards and Specifications"). All barricades and traffic control measures shall comply with the latest edition of the Manual on Uniform Traffic Control Devices, which can be found at http://mutcd.fhwa.dot.gov/pdfs/2009/pdf_index.htm ("MUTCD Standards and Specifications").

5. City shall have no obligation, liability, or responsibility for the costs incurred by the Owner to complete the Owner's work under this Agreement, including, but not limited to,

contractor and engineering fees. In no event will City be responsible for any payments, including payments for additional work or payments for costs occasioned by unforeseen or changed conditions encountered during the work. Nothing in this paragraph shall be interpreted or construed to limit the City's obligations as set forth in the Developer Agreement.

6. Owner agrees that, after written notice and reasonable opportunity to cure, failure to properly construct, maintain, repair or replace the Permitted Encroachments may result in City restoring the Encroachment Areas to City Standards and Specifications and assessing the cost to the Development Property. In such case: (a) Owner waives its right to protest the resolution of necessity for the improvements and restoration or other provisions of NDCC Chapter 40-27 as the same may be amended for which such resolutions are required pursuant to North Dakota Century Code, Section 40-22-17; (b) Owner specifically consents to the restoration of the rights-of-way to City Standards and Specifications upon termination of this Agreement; and (c) Owner further consents to the assessment of cost thereof to the Development Property and waives any right to protest the benefit or other assessment attributed to the construction. Project costs which may be assessed against the Development Property include all costs of the improvement that are authorized by North Dakota law, include; NDCC §40-23-05, such as engineering, fiscal agent's and attorney's fees for any services in connection with authorization and financing of the improvement, and all other costs as authorized by law.

7. Owner, its successors and assigns will, during any use of said public right-of-way, use due care to protect city streets, utilities and all other public property, minimize disruption to pedestrian travel in accordance with MUTCD Standards and Specifications.

8. To the extent Owner no longer occupies the Encroachment Areas, Owner will remove all Permitted Encroachments and restore the City right of way to City Standards and Specifications, at Owner's cost.

9. It is understood and agreed by and between the parties that Owner, its successors and assigns, will be responsible for the repair or replacement of any public property which may be damaged or destroyed as a direct or indirect result of Owner's use of the public right of way.

10. Owner agrees to indemnify, release and hold harmless City for any and all expenses, demands, claims or losses of any kind that may be asserted against City or sustained by City, its officers, agents and employees, its property, streets, sidewalks, or any other municipal improvements to the extent of Owner's negligence or willful misconduct in its use of the right of way permitted herein. Owner agrees to obtain a policy of insurance for public liability and

property damage insurance with respect to this Agreement with coverage limits reasonably acceptable to City and that names City as an additional insured. Owner shall provide City with a certificate of insurance evidencing such insurance and coverages.

11. Owner, its successors and assigns, agree to hold the City harmless for any expenses, damages, demands, claims or losses of any kind to any of Owner's property located in the Encroachment Areas occasioned by normal City operations in the right of way, including but not limited to snow removal, light maintenance, and water or sewer repairs.

12. This Agreement is personal to Owner and cannot be sold, transferred or otherwise assigned, except as provided for herein. The rights and obligations of Owner under this Agreement shall pass to any successor or assign of the Development Property, and this Agreement shall continue without interruption provided (1) City has not terminated the Agreement as provided herein; (2) Owner, its successors and assigns provide Notice to City of the change in ownership; and (3) proof that the insurance required herein continues uninterrupted, from either Owner or its successors and assigns. Failure to provide such Notice or Evidence of Insurance within 30 days of such transfer may be cause for Termination of this Agreement.

13. Owner understands and agrees that City construction in the right of way may be necessary from time to time and when necessary may damage or otherwise impact the Permitted Encroachments. In such event, Owner shall be responsible for the repair or replacement of the Permitted Encroachments. City shall be responsible for all restoration of the 2nd Encroachment Areas below the paving. City shall provide Owner Notice of the work to be completed and provide Owner a reasonable time, not less than 10 days, to repair or replace the Permitted Encroachment.

14. It is understood and agreed by and between the parties that this Agreement and permission to encroach is given subject to any statutory limitation on the authority of City to grant such permission, which may now or hereafter exist. City acknowledges that it is not aware of any existing limitations.

15. **TERMINATION OF ENCROACHMENT.** The authorization from the City allowing the encroachment onto City right-of-way should extend and continue so long as the Project remains on the Development Property. The provisions of this Agreement pertaining to the obligations of Owner to vacate the Encroachment Areas, to restore the Encroachment Areas, to allow the City to assess certain costs of restoration, et cetera, shall survive the termination of said authorization and this Agreement, itself, shall terminate only at such time as restoration of the right of way has been

completed, all warranties for such work are expired and all costs to be paid by Owner have, in fact, been either paid or have been appropriately assessed against the benefiting parcel.

It is specifically understood and agreed that the City retains authority to operate and maintain existing above ground and underground municipal facilities in the Encroachment Areas. The intent of this Agreement is to allow the Permitted Encroachments to remain in place for so long as the use of the Development Property remains the same. In the extraordinary event that City determines a public need for some or all of the Encroachment Areas without a change in use of the Development Property, including but not limited to the provision of public services such as street widening, storm and sanitary sewer repair and installation, water main repair and installation, sidewalk repair and installation and/or street and traffic lighting repair and installation, and the continued presence of some or all of the Permitted Encroachments is no longer practicable under the circumstances, City may, as determined by the City Commission, terminate Owner's rights, in whole or in part, under this Agreement.

16. This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree any litigation arising out of this Agreement will be venued in District Court in Cass County, North Dakota, and the parties waive any objection to personal jurisdiction.

17. The failure or delay of City to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right of the City to enforce each and every term of this Agreement.

18. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable, and the parties' obligations under this Agreement will remain binding and enforceable.

19. This Agreement, together with any related documents, as well as any amendments to those agreements and documents, constitutes the entire agreement between the parties regarding the matters described in this Agreement. This Agreement wholly amends, restates, replaces and supersedes the Prior Agreement.

20. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

21. It is specifically agreed between the parties that a copy of this Agreement may be recorded.

22. Owner agrees to pay City a \$500 processing fee, due at signing. The annual fee is waived by City.

23. **EFFECTIVE DATE.** This Agreement shall be effective as of the date and year last signed by the parties below, as reflected by the date of acknowledgement thereof.

[The remainder of this page intentionally left blank – signature pages follow]

Dated this ____ day of _____, 202__.

GREAT PLAINS BLOCK 3 HOLDINGS, LLC,
a North Dakota limited liability company

By _____
Bill Rothman, Vice-president

STATE OF NORTH DAKOTA)
) ss:
COUNTY OF CASS)

On this ____ day of _____, 202__, before me, a notary public in and for said county and state, personally appeared Bill Rothman to me known to be the Vice-president of GREAT PLAINS BLOCK 3 HOLDINGS, LLC, a North Dakota limited liability company, the entity described in and that executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

Notary Public

(SEAL)

CITY OF FARGO
a North Dakota municipal corporation

ATTEST:

On this ____ day of _____, 202__, before me, a notary public in and for said county and state, personally appeared **TIMOTHY J. MAHONEY, M.D.** and **STEVEN SPRAGUE**, to me known to be the Mayor and Auditor, respectively, of the **CITY OF FARGO**, a North Dakota municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

Notary Public
Cass County, North Dakota

EXHIBIT A**LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY**

The Development Property consists of the following properties located in the City of Fargo, Cass County, North Dakota:

TRACT A

That part of vacated Fifth Avenue North (Dedicated as Fourth Avenue), that part of a vacated alley, and all of Lot 8, all in Block 24, KEENEY AND DEVITT'S SECOND ADDITION, that part of Block 24 of KEENEY'S SUB-DIVISION OF CERTAIN LOTS IN PORTIONS OF BLOCKS NOS. 32 – 30 – 24 – 25 – 26 – 20 AND 19 IN KEENEY & DEVITT'S SECOND ADDITION, and that part of a vacated alley and Lot 1, Block 3, NORTH DAKOTA R1 URBAN RENEWAL ADDITION, all in the City of Fargo, said plats being on file and of record in the office of the Recorder, Cass County, North Dakota, described as follows:

Beginning at the northwest corner of said Lot 8, Block 24, said corner also being on the southerly right-of-way line of said Fifth Avenue North (Dedicated as Fourth Avenue); thence North 02 degrees 53 minutes 01 second West along the northerly extension of the westerly line of said Lot 8 a distance of 30.50 feet to a point on a line lying 30.00 feet southerly of, as measured at a right angle to, and parallel with, the centerline of the Burlington Northern Santa Fe Railway company's mainline track; thence North 86 degrees 54 minutes 11 seconds East along said parallel line a distance of 241.52 feet to the westerly right-of-way line of Second Street North, as shown on the DEDICATION PLAT OF SECOND STREET NORTH, said plat being on file and of record in the Cass County Recorder's office; thence South 09 degrees 24 minutes 11 seconds West along said westerly right-of-way line a distance of 185.68 feet to the south line of said Lot 1, Block 3; thence South 87 degrees 07 minutes 40 seconds West along the south line of said Lot 1, Block 3 a distance of 202.01 feet to the southwest corner of said Lot 1, Block 3; thence North 02 degrees 53 minutes 01 second West along the west line of said Lot 1, Block 3, and along the west line of said Block 24, a distance of 150.00 feet to the point of beginning. The above-described tract contains 40,120 square feet and is subject to all easements, restrictions, reservations, and rights-of-way of record.

TRACT B

LOT TWO, IN BLOCK THREE, NORTH DAKOTA R-1 URBAN RENEWAL ADDITION TO THE CITY OF FARGO, SITUATE IN THE COUNTY OF CASS AND THE STATE OF NORTH DAKOTA; EXCEPTING THEREFROM THE FOLLOWING DESCRIBED TRACT: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT TWO; THENCE SOUTH 87°07'40" WEST, ALONG THE NORTHERLY LINE OF SAID LOT TWO, FOR A DISTANCE OF 84.55 FEET; THENCE SOUTH 32°28'16" WEST FOR A DISTANCE OF 102.27 FEET; THENCE SOUTH 57°31'44" EAST FOR A DISTANCE OF 25.00 FEET; THENCE SOUTH 32°28'16" WEST FOR A DISTANCE OF 63.71 FEET, MORE OR LESS, TO A POINT OF INTERSECTION WITH THE SOUTHERLY LINE OF SAID LOT TWO; THENCE NORTH 87°04'06" EAST, ALONG THE SOUTHERLY LINE OF SAID LOT TWO, FOR A DISTANCE OF 144.53 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID LOT TWO; THENCE NORTHERLY, ALONG THE EASTERLY LINE OF SAID LOT

TWO, FOR A DISTANCE OF 151 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

The current property addresses are 419 3rd St. N and 225 4th Ave. N, Fargo, ND 58102, respectively.

EXHIBIT B ENCROACHMENT AREAS

[Drawing currently included below is for illustrative purposes only – drawings prepared and stamped by a ND licensed surveyor will be obtained by Owner and attached as Exhibit B prior to execution and recording of the Encroachment Agreement.]

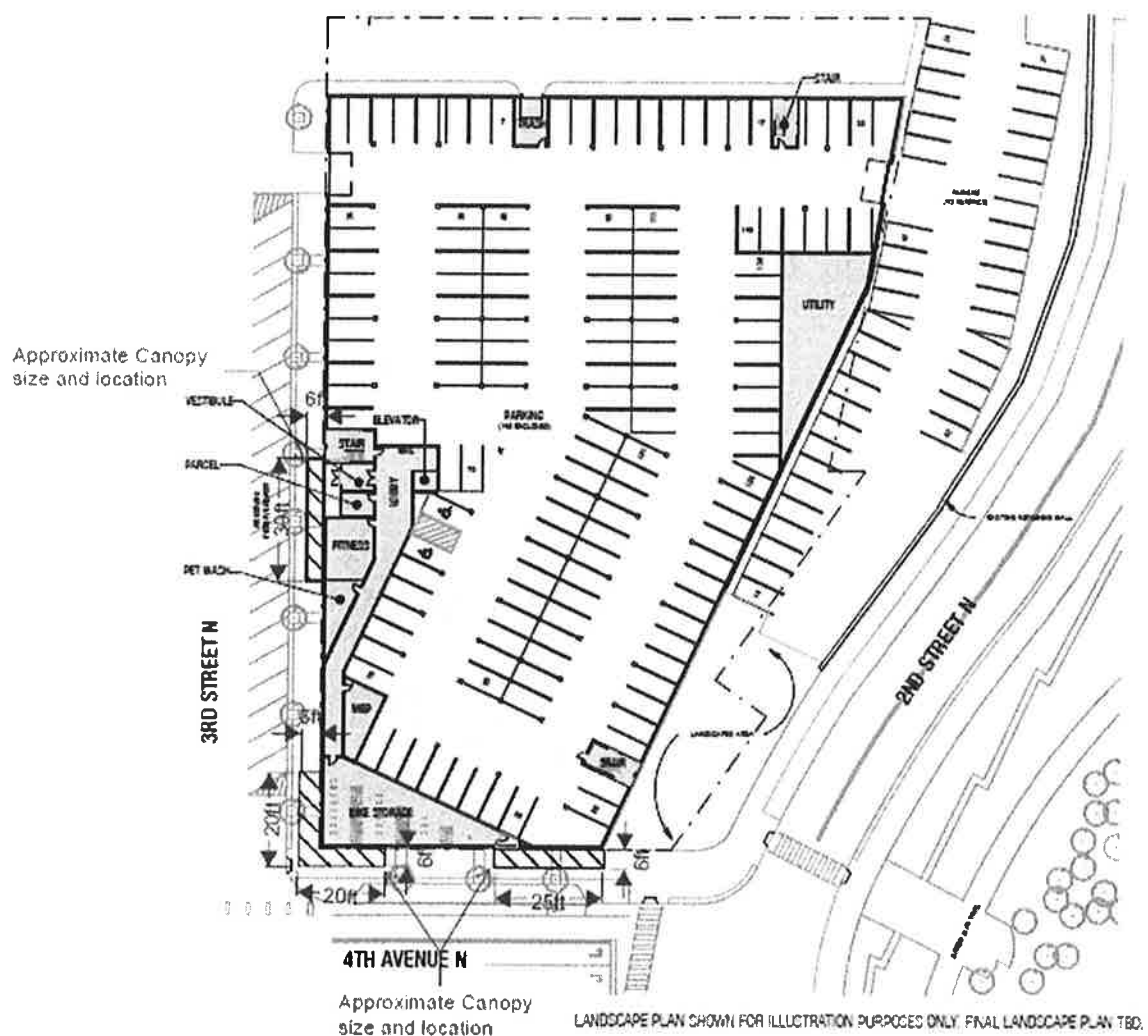


EXHIBIT E

OPTION TO REPURCHASE CITY PARCEL AGREEMENT

Find and Replace:

[[year of agreemt]]

[[Developer Name]]

[[Developer form of entity]]

[[PURCHASE PRICE WRITTEN OUT]] One Hundred Sixty Two Thousand Nine Hundred Eighty Four

[\$Purchase price-arabic] \$162,984

OPTION TO REPURCHASE CITY PARCEL AGREEMENT

THIS OPTION TO PURCHASE ("Option Agreement") is made as of _____, 20____ between **GREAT PLAINS BLOCK 3 HOLDINGS, LLC**, a North Dakota limited liability company, ("**Developer**") whose address is ATTN: President, 210 Broadway N., Suite 300, Fargo, ND 58102, and **City of Fargo**, a North Dakota municipal corporation, 225 Fourth Street North, Fargo, North Dakota 58102 ("**City**"). **Developer** and **City** may also be referred to herein as "party" or together as "parties".

RECITALS:

WHEREAS, this Option to Purchase was part of a Developer Agreement (the "Developer Agreement"), the effective date of which was the 1st day of June, **2022**, between **Developer** and **City** in which the subject property, described below, was sold and conveyed by **City** subject to certain conditions being met which, if not met, would provide the **City** with this option to purchase back the subject property; and,

WHEREAS, the parties are desirous of setting forth the terms of said purchase option;

NOW, THEREFORE, it is hereby stipulated and agreed:

1. **Grant of Option.** In consideration of the sum of one dollar (\$1.00) and other valuable consideration the receipt of which is hereby acknowledged, **Developer** hereby grants and conveys unto **City** the option to purchase that certain real property situate in the County of Cass and State of North Dakota legally described as:

[Legal description attached hereto as Appendix "A"]

the "Subject Property".

2. **Exercise of Option – Notice.** **City** shall be authorized to exercise said option in the event that on or before December 31, 2023 (the "Performance Deadline"), **Developer** has failed or refused to have meet the following conditions:

A. **Developer** must submit to **City** the **Developer's** plans for construction of the project that is the subject of the Developer Agreement, to include certain Minimum Improvements defined in the Developer Agreement, and **Developer** must have received the written approval of the **City**.

B. **Developer** must have commenced construction of the said approved project, said commencement having been deemed to occur when (1) **Developer**, or **Developer's** authorized contractor, has obtained a building permit for commencement of excavation of the project and (2) excavation has actually been commenced on said project.

Upon the failure or refusal of **Developer** to meet both of said conditions by said Performance Deadline, **City** shall have the right to exercise its option to purchase the Subject Property by delivery to **Developer** of written notice, delivered to **Developer** on or before **March 31, 2024**.

3. **Purchase Price.** In the event **City** exercises its option, as provided herein, **City** shall pay to **Developer** a purchase price consisting of the sum of (1) **One Hundred Sixty Two Thousand Nine Hundred Eighty Four and no/100 DOLLARS (\$162,984)** and (2) one-half of the costs incurred by **Developer**, if any, in demolishing the structure or structures existing on the Subject Property as of the effective date of the Developer Agreement, assuming **Developer** has initiated demolition thereof prior to the Performance Deadline, which sum shall be referred to herein as the "Purchase Price". The Purchase Price shall be payable as follows:

a. The PURCHASE PRICE shall be paid by wire transfer of immediately available United States funds, to be received by **Developer** from the Title Company on the Closing Date pursuant to written wiring instructions to be delivered by **Developer** to the Title Company prior to the Closing Date.

4. **Title.** If title to the property is subject to any liens or encumbrances that didn't exist when Developer took title, **Developer** shall have a period of 90 days in which to remove any such liens or encumbrances.

5. **Terms of Sale and Closing.** Upon the exercise of the option by **City**, the closing shall occur within 90 days of the notice unless such time shall be extended by the mutual consent of the parties or to allow title defects to be cured as provided in the preceding paragraph. At the closing, **Developer** shall deliver to **City** a warranty deed free and clear of all liens or encumbrances not existing when Developer took title, if any, and building and zoning laws, ordinances and state and federal regulations and **City** shall pay to **Developer** the balance of the purchase price after receiving all due credits for pro-rated taxes and special assessments and any other credit due to **Developer**.

6. **Closing Costs.** It is specifically acknowledged and agreed that **Developer** shall pay the following costs connected with closing of this transaction should this option be exercised:

- a. The preparation of the warranty, deed; and,
- b. The recordation of any instruments required to clear title as provided in Sections 4 and 5.

7. **Taxes and Special Assessments.** Real estate taxes and installments for special assessments for the year prior to the year of closing and all and prior years shall be paid by **Developer**. For the year in which the closing occurs, real estate taxes and installments of special assessments shall be prorated to the date of closing. In all events **City**, if Option is exercised, shall pay the real estate taxes and installments of special assessments for the year subsequent to the year of closing.

8. **Possession.** Possession shall be delivered to **City** on the date of closing.

9. **Amendment.** No amendment or modification of this agreement, including extension of the time for the exercise of any option granted hereunder shall be effective unless reduced to writing and subscribed by each of the parties hereto.

10. Form of Notices; Addresses.

All notices, requests, consents, or other communications required under this agreement shall be in writing and shall be deemed to have been properly given if served personally or if sent by United States registered or certified mail or overnight delivery service to the parties as follows (or at such other address as a party may from time to time designate by notice given pursuant to this Section):

To Developer: **GREAT PLAINS BLOCK 3 HOLDINGS, LLC**
ATTN: President
210 Broadway N., Suite 300,
Fargo, ND 58102

To the City: City Auditor
Fargo City Hall
225 N. 4th Street
Fargo, ND 58102

and to: Director of Strategic Planning and Research
ATTN: James Gilmour
Fargo City Hall
225 N. 4th Street
Fargo, ND 58102

Each notice shall be deemed given and received on the date delivered if served personally or, if sent by United States registered or certified mail or by overnight delivery service, then the day so sent to the address of the respective party, as provided in this Article, postage pre-paid. Notices sent by a party's counsel shall be deemed notices sent by such party.

11. **Binding Effect.** This shall inure to and be binding upon the parties hereto, their respective heirs, administrators, executors' personal representatives' successors and assigns. **City** has the right to assign this purchase option.

12. **Recording of Option Right of City.** City shall be authorized to record this Agreement against the Subject Property with the Office of the Recorder, County of Cass, State of North Dakota.

IN WITNESS WHEREOF, the parties hereto, have signed this purchase option this _____ day of _____, 20____.

[Remainder of page intentionally blank – execution pages to follow]

Developer:

GREAT PLAINS BLOCK 3 HOLDINGS, LLC,
a North Dakota limited liability company

By: _____

STATE OF NORTH DAKOTA)
)ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____, the _____ of **GREAT PLAINS BLOCK 3
HOLDINGS, LLC**, a North Dakota limited liability company, on behalf of said company.

Notary Public

CITY:

CITY OF FARGO,
a North Dakota municipal corporation

(SEAL)

By _____
Timothy J. Mahoney, M.D., its Mayor

ATTEST:

By _____
Steven Sprague, City Auditor

STATE OF NORTH DAKOTA)
)ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by Timothy J. Mahoney, M.D., and Steven Sprague, the Mayor and City Auditor,
respectively, of the City of Fargo, a North Dakota municipal corporation, on behalf of said City.

Notary Public

Legal description obtained from previously recorded instrument.

This document drafted by:

Erik R. Johnson
Fargo Assistant City Attorney
(701) 371-6850
ejohnson@lawfargo.com

APPENDIX "A"

TO OPTION TO PURCHASE

Legal Description of Subject Property

TRACT A

That part of vacated Fifth Avenue North (Dedicated as Fourth Avenue), that part of a vacated alley, and all of Lot 8, all in Block 24, KEENEY AND DEVITT'S SECOND ADDITION, that part of Block 24 of KEENEY'S SUB-DIVISION OF CERTAIN LOTS IN PORTIONS OF BLOCKS NOS. 32 - 30 - 24 - 25 - 26 - 20 AND 19 IN KEENEY & DEVITT'S SECOND ADDITION, and that part of a vacated alley and Lot 1, Block 3, NORTH DAKOTA R1 URBAN RENEWAL ADDITION, all in the City of Fargo, said plats being on file and of record in the office of the Recorder, Cass County, North Dakota, described as follows:

Beginning at the northwest corner of said Lot 8, Block 24, said corner also being on the southerly right-of-way line of said Fifth Avenue North (Dedicated as Fourth Avenue); thence North 02 degrees 53 minutes 01 second West along the northerly extension of the westerly line of said Lot 8 a distance of 30.50 feet to a point on a line lying 30.00 feet southerly of, as measured at a right angle to, and parallel with, the centerline of the Burlington Northern Santa Fe Railway company's mainline track; thence North 86 degrees 54 minutes 11 seconds East along said parallel line a distance of 241.52 feet to the westerly right-of-way line of Second Street North, as shown on the DEDICATION PLAT OF SECOND STREET NORTH, said plat being on file and of record in the Cass County Recorder's office; thence South 09 degrees 24 minutes 11 seconds West along said westerly right-of-way line a distance of 185.68 feet to the south line of said Lot 1, Block 3; thence South 87 degrees 07 minutes 40 seconds West along the south line of said Lot 1, Block 3 a distance of 202.01 feet to the southwest corner of said Lot 1, Block 3; thence North 02 degrees 53 minutes 01 second West along the west line of said Lot 1, Block 3, and along the west line of said Block 24, a distance of 150.00 feet to the point of beginning. The above-described tract contains 40,120 square feet and is subject to all easements, restrictions, reservations, and rights-of-way of record.

EXHIBIT F

CERTIFICATE OF COMPLETION

WHEREAS, the City of Fargo, North Dakota, a municipal corporation, (the “City”) and GREAT PLAINS BLOCK 3 HOLDINGS, LLC, a North Dakota limited liability company (the “Developer”) have entered into a Developer Agreement dated as of the 1st day of June, 2022; and

WHEREAS, the Developer has to the present date performed said covenants and conditions insofar as it is able in a manner deemed sufficient by the City to permit the execution and recording of this certification:

NOW, THEREFORE, this is to certify that all building construction and other physical improvements specified to be done and made by the Developer have been completed, and the above covenants and conditions in said Developer Agreement have been performed by the Developer therein, and that the Tax Increment Note, referred to in said Developer Agreement, may be issued to Developer by the City.

CITY OF FARGO, NORTH DAKOTA

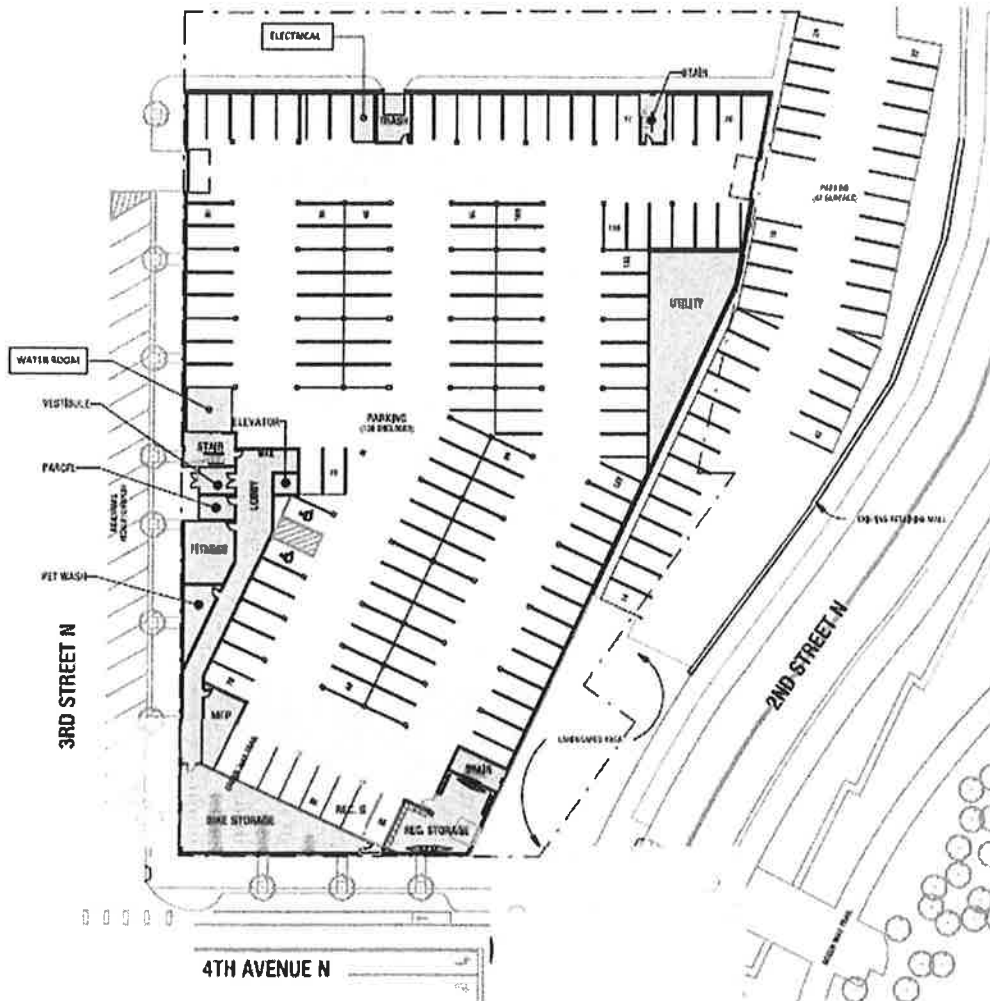
By: _____
Timothy J. Mahoney, M.D., Mayor

Attest:

Steven Sprague, City Auditor

Signature page to the Certificate of Completion of the City of Fargo, North Dakota.

EXHIBIT G EXEMPLAR SITE PLAN



LANDSCAPE PLAN SHOWN FOR ILLUSTRATION PURPOSES ONLY, FINAL LANDSCAPE PLAN TBD.



ACT 21341 | © 2022 AG ARCHITECTS 16

EXHIBIT H
FORM OF LEGAL OPINION OF DEVELOPER'S COUNSEL

[Fargo]

Re: Developer Agreement by and between the City of Fargo, North Dakota, and GREAT PLAINS BLOCK 3 HOLDINGS, LLC

Gentlemen:

As counsel for GREAT PLAINS BLOCK 3 HOLDINGS, LLC (the "Company"), and in connection with the execution and delivery of a certain Developer Agreement (the "Developer Agreement") dated as of June 1, 2022, between the Company and the City of Fargo, North Dakota (the "City"), we hereby render the following opinion:

We have examined the original certified copy, or copies otherwise identified to our satisfaction as being true copies, of the following:

- (a) The Articles of Organization and Operating Agreement of the Company;
- (b) Minutes relating to the meetings of the Board of Governors or any other managing committee of the Company at which action was taken with respect to the transactions covered by this opinion;
- (c) The Developer Agreement;
- (d) and such other documents and records as we have deemed relevant and necessary as a basis for the opinion set forth herein.

Based on the pertinent law, the foregoing examination and such other inquiries as we have deemed appropriate, we are of the opinion that:

1. The Company has been duly organized and is validly existing as a limited liability company under the laws of the State of North Dakota and is qualified to do business in the State of North Dakota. The Company has full power and authority to execute, deliver and perform in full the Developer Agreement; and the Developer Agreement has been duly and validly authorized, executed and delivered by the Company and, assuming due authorization, execution and delivery by the other parties thereto, is in full force and effect and is a valid and legally binding instrument of the Company enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

2. The consummation of the transactions contemplated by the Developer Agreement, and the carrying out of the terms thereof, will not result in violation of any provision of, or in default under, the articles of organization, member control agreement or operating agreement of the Company or any indenture, mortgage, deed of trust, indebtedness, agreement, judgment, decree, order, statute, rule, regulation or restriction to which the Company is a party or by which it or its property is bound or subject, and do not constitute a loan to the Company.

Very truly yours

EXHIBIT I

FORM OF EASEMENT AGREEMENT

EASEMENT AGREEMENT

A. THIS EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the ____ day of _____, 202__ (the "Effective Date"), by and among GREAT PLAINS BLOCK 3 HOLDINGS, LLC, a North Dakota limited liability company ("Grantor"), whose address is Attn: Bill Rothman, Vice President, 210 Broadway N., Suite 300, Fargo, ND 58102, and The City of Fargo, a North Dakota municipal corporation, ("Grantee"), whose address is City Auditor, Fargo City Hall, 200 N. 3rd Street, Fargo, ND 58102 .

RECITALS

B. Grantor and Grantee entered into a Development Agreement dated June 1, 2022, whereby Grantor acquired from Grantee that certain tract of land legally described on Exhibit A attached hereto and made a part hereof (the "Grantor Property"), and upon which Grantor will, together with other adjacent property, construct certain improvements (the "Project").

C. 2nd Street North, a publicly dedicated right of way, was recently relocated and widened and the West boundary of such right way adjoins the East boundary of the Grantor Property ("2nd Street ROW").

D. Additionally, a retaining wall was recently constructed within the 2nd Street ROW and certain underground utilities were installed in the 2nd Street ROW Westerly of the retaining wall (all such items, the "Improvements").

E. Due to varying elevations, access to the Improvements can only be safely and conveniently accessed across a portion of the Grantor Property.

F. Grantee desires to obtain from Grantor and Grantor desires to grant to Grantee, a non-exclusive easement over and across the Northerly 20 feet of the Grantor Property (the "Easement Area") for purposes of: (1) access to and repair and maintenance of the Improvements; and (2) use by law enforcement, fire, ambulance and other City or other government or public emergency services to the extent needed to satisfy all building code, fire code and any other safety code requirements pertaining to the Project.

AGREEMENTS

NOW, THEREFORE, in consideration of the recitals, the mutual agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby declare, grant, covenant and agree to the following:

1. Grant of Easement. Grantor hereby establishes, declares, grants, and conveys to Grantee, a non-exclusive, appurtenant, permanent access easement upon the Easement Area for

purposes of: (1) access to and repair and maintenance of the Improvements; and (2) use by law enforcement, fire, ambulance and other City or other government or public emergency services to the extent needed to satisfy all building code, fire code and any other safety code requirements pertaining to the Project. In conjunction with construction of the Project, Grantor shall pave, restore and/or repave the Easement Area as appropriate and shall thereafter keep the Easement Area in good, drivable condition.

2. Notice. The Grantee, its successors or assigns, shall give the then owner of the Grantor Property not less than 10 days advance notice prior to exercising its rights under this Agreement, except in the case of exigent circumstances, where the notice may be less than 10 days, but shall be as much in advance as reasonably possible.

3. Non-Disturbance. City shall exercise the rights granted in this Agreement in such a manner that causes the least interference and disturbance of tenants and other occupants of the Grantor Property as is practicable under the circumstances. Notwithstanding anything in this Agreement to the contrary, the rights granted in this Agreement are limited to the passage of persons and vehicles and such rights do not include the right to stage or store any materials or equipment within the Easement Area.

4. Maintenance Obligations. Grantee shall be responsible to promptly repair any damage to the Easement Area resulting directly from activities or use of the Easement Area for repair or replacement of the Improvements (as opposed to damage resulting from normal wear and tear of the Easement Area”).

5. Hold Harmless. The Grantee, its successors or assigns, shall defend and hold the Grantor, its successors or assigns, harmless from and against any claims, liens, liabilities, lawsuits, costs, expenses damages and/or the like (including reasonable attorneys’ fees), including, but not limited to, claims for personal injury, wrongful death, property damage or the like, resulting from, arising out of or in any way related to exercising its rights under this Agreement.

6. Notice of Default. A party will not be in default under this Agreement, unless such party shall have been served with a written notice specifying the default and shall fail to cure such default within 30 days after receipt of such notice, or shall fail to commence to cure and thereafter proceed diligently to cure such default within such period of time, if the default cannot be cured within such 30 day period.

7. Not a Public Dedication. Nothing contained in this Agreement shall, or shall be deemed to, constitute a gift or dedication of any portion of the Grantor Property to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement be strictly limited to and for the purposes expressed herein.

8. Scope/Binding Effect. The rights and obligations herein provided shall inure to the benefit of and be binding upon the parties hereto, their successors, assigns, heirs and legal representatives, and shall run with, benefit and burden the Grantor Property and the Flood Wall Area.

9. Waiver. No waiver of any breach of the easements or of any rights, obligations, covenants and/or provisions herein contained shall be construed as, or constitute, a waiver of any breach or a waiver, acquiescence in or consent to any further or succeeding breach of the same or any other such easements, rights, obligations, covenants and/or other provisions.

10. Recording. This Agreement shall be recorded against the Grantor Property in the office of the County Recorder for Cass County, North Dakota.

11. Severability. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms or provisions of this Agreement shall not be affected thereby, but such remaining terms and provisions shall be valid and enforceable to the fullest extent permitted by law.

12. Governing Law. This document shall be construed and enforced in accordance the laws of the State of North Dakota.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on and as of the Effective Date.

[The rest of this page intentionally left blank. Signature pages follow.]

GRANTOR SIGNATURE PAGE
FOR
EASEMENT AGREEMENT

GREAT PLAINS BLOCK 3 HOLDINGS, LLC, a North Dakota limited liability company

By: _____
Bill Rothman, Vice President

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this ____ day of _____, 202____, by Bill Rothman, Vice President of GREAT PLAINS BLOCK 3 HOLDINGS, LLC, a North Dakota limited liability company, on behalf of the limited liability company.

Notary Public

GRANTEE SIGNATURE PAGE
FOR
EASEMENT AGREEMENT

CITY OF FARGO,
a North Dakota municipal corporation

By: _____
Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steven Sprague, City Auditor

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this _____ day of _____, 202____, before me personally appeared Timothy J. Mahoney, M. D. and Steven Sprague, to me known to be the Mayor and City Auditor of the City of Fargo, a North Dakota municipal corporation, and that they executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of said municipal corporation.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Bueide Law Firm (DAB)
1 N 2nd St. Ste 100
Fargo, ND 58102

EXHIBIT A

LEGAL DESCRIPTION OF GRANTOR TRACT

That part of vacated Fifth Avenue North (Dedicated as Fourth Avenue), that part of a vacated alley, and all of Lot 8, all in Block 24, KEENEY AND DEVITT'S SECOND ADDITION, that part of Block 24 of KEENEY'S SUB-DIVISION OF CERTAIN LOTS IN PORTIONS OF BLOCKS NOS. 32 - 30 - 24 - 25 - 26 - 20 AND 19 IN KEENEY & DEVITT'S SECOND ADDITION, and that part of a vacated alley and Lot 1, Block 3, NORTH DAKOTA R1 URBAN RENEWAL ADDITION, all in the City of Fargo, said plats being on file and of record in the office of the Recorder, Cass County, North Dakota, described as follows:

Beginning at the northwest corner of said Lot 8, Block 24, said corner also being on the southerly right-of-way line of said Fifth Avenue North (Dedicated as Fourth Avenue); thence North 02 degrees 53 minutes 01 second West along the northerly extension of the westerly line of said Lot 8 a distance of 30.50 feet to a point on a line lying 30.00 feet southerly of, as measured at a right angle to, and parallel with, the centerline of the Burlington Northern Santa Fe Railway company's mainline track; thence North 86 degrees 54 minutes 11 seconds East along said parallel line a distance of 241.52 feet to the westerly right-of-way line of Second Street North, as shown on the DEDICATION PLAT OF SECOND STREET NORTH, said plat being on file and of record in the Cass County Recorder's office; thence South 09 degrees 24 minutes 11 seconds West along said westerly right-of-way line a distance of 185.68 feet to the south line of said Lot 1, Block 3; thence South 87 degrees 07 minutes 40 seconds West along the south line of said Lot 1, Block 3 a distance of 202.01 feet to the southwest corner of said Lot 1, Block 3; thence North 02 degrees 53 minutes 01 second West along the west line of said Lot 1, Block 3, and along the west line of said Block 24, a distance of 150.00 feet to the point of beginning.

The above-described tract contains 40,120 square feet and is subject to all easements, restrictions, reservations, and rights-of-way of record.

27j

May 23, 2022

Board of City Commissioners
City Hall
Fargo, ND 58102

RE: New Industry Exemption for Amity Technology, LLC.

Dear Commissioners:

Attached is the application made by Amity Technology, LLC. for a 5 year, new industry property tax exemption, according to N.D.C.C. Chapter 40-57.1. This application is for a business expansion that would facilitate the production of a new agricultural implement. The project has been certified as primary sector.

Notices to competitors have been published. The Economic Development Incentive Committee has met to consider this application. No potential competitors appeared at the Economic Development Incentive Committee meeting. This project meets our current policy. The application contains information regarding projected value of the project upon completion, the nature of jobs to be created, and a description of the product to be manufactured. The applicant will pay the full land tax estimated at approximately \$6,000 annually.

The recommendation of the Economic Development Incentive Committee is to approve a 5-year tax exemption.

SUGGESTED MOTION:

Approval of a 5-year, 100% new industry property tax exemption for 401 27 St N.

Sincerely,

Mike Splonskowski
City Assessor

Application For Property Tax Incentives For New or Expanding Businesses

N.D.C.C. Chapter 40-57.1

Project Operator's Application To Fargo
City or County

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a non-voting member in the negotiations and deliberation of this application.

This application is a public record

Identification Of Project Operator

1.	Name of project operator of new or expanding business	<u>AMITY TECHNOLOGY</u>			
2.	Address of project	<u>401 27 ST N</u>			
	City	<u>Fargo</u>	County	<u>Cass</u>	
3.	Mailing address of project operator	<u>2800 7th Ave N</u>			
	City	<u>FARGO</u>	State	<u>ND</u>	Zip <u>58103</u>
4.	Type of ownership of project				
	<input type="checkbox"/> Partnership	<input type="checkbox"/> Subchapter S corporation	<input type="checkbox"/> Individual proprietorship		
	<input type="checkbox"/> Corporation	<input type="checkbox"/> Cooperative	<input checked="" type="checkbox"/> Limited liability company		
5.	Federal Identification No. or Social Security No.	<div style="background-color: black; width: 200px; height: 1.2em;"></div>			
6.	North Dakota Sales and Use Tax Permit No.	<div style="background-color: black; width: 150px; height: 1.2em;"></div>			
7.	If a corporation, specify the state and date of incorporation	<u>MN Dec 1995</u>			
8.	Name and title of individual to contact	<u>HOWARD or BRIAN DAHL</u>			
	Mailing address	<u>2800 7th Ave N</u>			
	City, State, Zip	<u>Fargo</u>	<u>ND</u>	<u>58102</u>	Phone No. <u>701-232-4199</u>

Project Operator's Application For Tax Incentives

9. Indicate the tax incentives applied for and terms. Be specific.			
<input checked="" type="checkbox"/> Property Tax Exemption		<input type="checkbox"/> Payments In Lieu of Taxes	
<u>5</u> Number of years	<u> </u> Beginning year	<u> </u> Ending year	
<u>100</u> Percent of exemption	<u> </u> Amount of annual payments (attach schedule if payments will vary)		
10. Which of the following would better describe the project for which this application is being made:			
<input type="checkbox"/> New business project		<input checked="" type="checkbox"/> Expansion of a existing business project	

Description of Project Property

11. Legal description of project real property

Lot 1 Block 1 COMPOSITE VENTURES ADDN LTI BLK 1

12. Will the project property be owned or leased by the project operator? ☒ Owned ☐ Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?

☐ Yes ☐ No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

13. Will the project be located in a new structure or an existing facility? ☐ New construction ☒ Existing facility

If existing facility, when was it constructed? 1977

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application N/A

b. Description of project to be constructed including size, type and quality of construction

c. Projected number of construction employees during the project construction N/A

14. Approximate date of commencement of this project's operations OCTOBER 31 2022

15. Estimated market value of the property used for this project:

a. Land..... \$ 390,000

b. Existing buildings and structures for which an exemption is claimed..... \$ 1,873,500

c. Newly constructed buildings and structures when completed..... \$ 0

d. Total..... \$ 2,263,500

e. Machinery and equipment..... \$ 1,000,000

16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

a. Land (not eligible)..... 

b. Eligible existing buildings and structures..... \$ 93,675

c. Newly constructed buildings and structures when completed..... \$ 0

d. Total taxable valuation of property eligible for exemption (Add lines b and c)..... \$ 93,675

e. Enter the consolidated mill rate for the appropriate taxing district..... 296.01

f. Annual amount of the tax exemption (Line d multiplied by line e)..... \$ 27,728.74

Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.

17. Type of business to be engaged in: ☐ Ag processing ☒ Manufacturing ☐ Retailing
☐ Wholesaling ☐ Warehousing ☐ Services
18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).
Building is needed to support a new product called
CROP CRASER THAT IS PRIMARILY FOR THE DAIRY FARMER
(SILAGE TRANSPORT) BUT ALSO CAN BE USED FOR OTHER
CROPS. ALSO THE BUILDING WILL SUPPORT LARGE POWDER COATED
PARTS.
19. Indicate the type of machinery and equipment that will be installed
POWDER COAT PAINT LINE, CRANES AND MONORAILS
20. For the project only, indicate the projected annual revenue, expense, and net income (before tax) from either the new business or the expansion itself for each year of the requested exemption.

	New/Expansion Project only Year 1	New/Expansion Project only Year 2	New/Expansion Project only Year 3	New/Expansion Project only Year 4	New/Expansion Project only Year 5
Annual revenue	\$3 million	\$5 million	\$7 million	\$8 million	\$9 million
Annual expense	\$2.7 million	\$4.5 million	\$6.3 million	\$7.2 million	\$8 million
Net income	\$300K	\$500K	\$700K	\$800K	\$1 million

21. Projected number and salary of persons to be employed by the project for the first five years:

Current positions & positions added the initial year of project

# Current Positions	New Positions Under \$13.00	New Positions \$13.01-\$15.00	New Positions \$15.01-\$20.00	New Positions \$20.01-\$28.00	New Positions \$28.01-\$35.00	New Positions Over \$35.00
67				5		

Year	(Before project)	Year 1	Year 2	Year 3	Year 4	Year 5
No. of Employees	(1) 65	70	75	80	82	85
	(2) 2	2	2	2	2	2
Estimated payroll	(1) 4M	4.5M	5.0M	5.5M	5.8M	6.2M
	(2) 50K	50K	50K	60K	60K	60K

(1) - full time
(2) - part time

22. Is the project operator succeeding someone else in this or a similar business? ☐ Yes ☒ No
23. Has the project operator conducted this business at this or any other location either in or outside of the state?
☐ Yes ☒ No
24. Has the project operator or any officers of the project received any prior property tax incentives? ☐ Yes ☒ No
- If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).

Business Competition

25. Is any similar business being conducted by other operators in the municipality? ☒ Yes ☐ No

If YES, give name and location of competing business or businesses

TWO OTHER COMPANIES DO POWDER COATING, BUT PRIMARILY FOR THEIR OWN PRODUCT

Percentage of Gross Revenue Received Where Underlying Business Has ANY Local Competition ☒ 1 %

Property Tax Liability Disclosure Statement

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it? ☐ Yes ☒ No
27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? ☐ Yes ☒ No

If the answer to 26 or 27 is Yes, list and explain

Use Only When Reapplying

28. The project operator is reapplying for property tax incentives for the following reason(s):
- ☐ To present additional facts or circumstances which were not presented at the time of the original application
 - ☐ To request continuation of the present property tax incentives because the project has:
 - ☐ moved to a new location
 - ☐ had a change in project operation or additional capital investment of more than twenty percent
 - ☐ had a change in project operators
 - ☐ To request an additional annual exemption for the year of _____ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

Notice to Competitors of Hearing

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, Itamar D. L., do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.

Itamar D. L.

Signature

CEO

Title

Date

PRIVACY ACT NOTIFICATION

In compliance with the Privacy Act of 1974, disclosure of a social security number or Federal Employer Identification Number (FEIN) on this form is required under N.D.C.C. §§ 40-57.1-03, 40-57.1-07, and 57-01-15, and will be used for tax reporting, identification, and administration of North Dakota tax laws. Disclosure is mandatory. Failure to provide the social security number or FEIN may delay or prevent the processing of this form.

Certification of Governing Body (To be completed by the Auditor of the City or County)

The municipality shall, after granting any property tax incentives, certify the findings to the State Tax Commissioner and Director of Tax Equalization by submitting a copy of the project operator's application with the attachments. The governing body, on the _____ day of _____, 20____, granted the following:

☐ **Property Tax Exemption**

_____ Number of years

_____ Percent of exemption

☐ **Payments in lieu of taxes**

_____ Beginning year _____ Ending year

_____ Amount of annual payments (Attach schedule if payments will vary)

Auditor

Business Incentive Agreement

1. In fulfillment of the requirements of N.D.C.C. § 54-60.1-03, Grantor and Recipient enter into this Business Incentive Agreement.

Grantor

Name	City of Fargo
Address	225 4th Street North Fargo, ND 58102

Recipient

Name	Amity Technology, LLC		
Address	2800 7th Ave North Fargo, ND 58102		
Contact Person	Brian Dahl	E-mail Address	bdahl@amitytech.com
Recipient Parent Company (If applicable)			
Business Type (NAICS Code)	333111		
Location of Recipient Prior to Receiving Incentive (If different)			

2. Description of project.

Current facilities have been outgrown by the physical size and scale of products produced. Currently the business is relying on out-of-state manufacturers for powder coating and welding large frame assemblies. Newly developed product, CropChaser, shows real growth potential with our current plus new markets.

3. Grantor(s) agrees to provide recipient with a business incentive described as follows:

3.a. Is this incentive tax increment financing? ☐ Yes ☐ No

If yes, describe the type of district:

4. The business incentive will be provided on _____.
This date is the benefit date.

5. The public purpose(s) of the business incentive are:

- | | |
|--|--|
| <input type="checkbox"/> Assisting community development | <input type="checkbox"/> Increase tax base |
| <input checked="" type="checkbox"/> Directly create employment opportunities | <input checked="" type="checkbox"/> Indirectly increase employment opportunities |
| <input checked="" type="checkbox"/> Job retention | <input type="checkbox"/> Other _____ |

6. Value of Business Incentive: \$ _____

7. Recipient currently employs 67 people, located in Fargo, ND.

8. In return for the business incentive, Recipient shall, within two years create: 10
Number of full-time equivalent jobs

<u>21.50</u>	+	<u>6.50</u>	=	<u>28.⁰⁰</u>
Average hourly wage		Benefits per hour value		Average hourly compensation

9. The Recipient shall continue operations in the jurisdiction in which the business incentive was issued for five years or more after the benefit date.
10. Recipient shall file a recipient report with the Grantor, as described in N.D.C.C. § 54-60.1-05 annually on or before March 1st of each year for two years, beginning in 2007, following the benefit date or until the goals of paragraph 8 are met, whichever is later.
- 10.a. Grantor shall mail the recipient a warning letter if no report is received by March 8th. Recipient shall file the progress report within 14 days of the postmarked date of the warning letter.
- 10.b. If a recipient report is not received within 14 days of the warning letter, Recipient agrees to pay to Grantor a \$100 penalty for each subsequent day until the report is filed. The maximum penalty under this section may not exceed \$1,000.
11. Recipient shall pay back the value of the incentive to the Grantor, prorated to reflect any partial fulfillment of the job and compensation goals, if, after two years, the job and compensation goals listed in paragraph 8 are not met.

- 11.a. Paragraph 11 does not apply if the job and compensation goals were not met as a result of an act of God or terrorism.
12. This business incentive agreement shall only be modified or extended by the Grantor pursuant to N.D.C.C. § 54-60.1-04.
13. If the terms of this business incentive agreement are not met, Recipient shall not receive a business incentive from any grantor for five years from the date of failure or until a recipient satisfies the repayment obligation.
14. The Recipient has disclosed, in attachment "A" of this agreement, all additional financial assistance received from state or political subdivision Grantors for this project since inception.
15. By signing this agreement, Recipient verifies that it has not failed to meet the terms of any business incentive agreement in the last five years.

Dated this _____ day of _____, 20 ____.

Grantor: _____ on behalf of _____

Dated this 21st day of April, 20 22.

Recipient: Harold Elliott on behalf of Harmony Technology



May 4, 2022

Brian Dahl
Amity Technology LLC
2800 7th Ave. N
Fargo, ND 58102

Dear Brian:

Thank you for your application for primary-sector certification by the North Dakota Department of Commerce, Economic Development & Finance Division. We have reviewed your application and determined that ED&F can recertify your company, **Amity Technology LLC**, as primary sector and a new wealth creator in the economy of North Dakota. This certification is valid for **four years** (5/3/2022 to 5/3/2026).

Most of North Dakota's economic development programs, tools and incentives are targeted toward primary-sector clients. You may be requested to provide a copy of this primary-sector certification letter when you apply for certain economic development incentive and funding programs.

This certification does not guarantee the receipt of any North Dakota business incentive. For example, there are additional qualification criteria for the Seed Capital Investment and Agricultural Business Investment personal income tax credits, and it is critical that investments **NOT** be made prior to the business receiving certification for these two credits. If you are pursuing certification for investment tax credits and need to know the criteria required for qualification, contact Joseph Mwagura at 701-328-5367.

This certification is not the application process for the North Dakota New Jobs Training Program administered by Job Service North Dakota. To apply for the North Dakota New Jobs Training Program, you must contact Job Service North Dakota for the required application forms. Application forms for other programs that require primary sector certification are available from the agency administering the program.

Also, companies and individuals pursuing the investment tax credit incentive are reminded there is a cap on available dollars. Please visit with the ND Office of the Tax Commissioner regarding the remaining balance for investment tax credits. The credits are available on a first-come-first-serve basis until the law-defined cap is met.

North Dakota appreciates your contribution to the citizens and economy of our state. If there is anything further we can do to assist your company, please contact us at 701-328-5300.

Sincerely,



Joshua Teigen, Director
Economic Development & Finance Division

Exemption Evaluation Calculator				123.0	138.0			
Amity Technologies				Points	Points			
Project Type Code	Year 1	1	38.0	Year 3	1	38.0		
Current Number Of Employees		67			67			
Hourly Salary Without Benefits	# Jobs			# Jobs				
Under \$13.00								
\$13.01-\$15.00								
\$15.01-\$20.00								
\$20.01-\$28.00	5	Pts. For # Jobs->	10.0	15	Pts. For # Jobs->	25.0		
\$28.01-\$35.00		Pts. For \$ Jobs->	30.0		Pts. For \$ Jobs->	30.0		
Over \$35.00								
TOTAL # OF JOBS CREATED	5			15				
Primary Sector?		y			y			
% GI w/ Local Competition (not downtown)		5%	25.0		5%	25.0		
Value of Proposed Buildings		\$ 1,873,500	20.0		\$ 1,873,500	20.0		
Downtown Location (Y/N)		N	0.0		N	0.0		
Startup Firm (Y/N)		N	0.0		N	0.0		
Has Const Started or Has Bldg Been Leased or Occupied If Existing (Y/N)		N	0.0		N	0.0		
Number of Years (Exemption)		5			5			
Company Safety Experience Rating			0.0			0.0		
RECOMMENDATION IS TO APPROVE				APPROVE				
Description	Manufacturing			Description	Manufacturing			
Estimated New Annual Payroll	\$249,600			Estimated New Annual Payroll	\$748,800			
Estimated Annual Real Estate Tax	\$27,729			Estimated Annual Real Estate Tax	\$27,729			
Property Value / # of Jobs	\$ 374,700			Property Value / # of Jobs	\$ 124,900			
Total Value Of Benefit	\$ 138,644			Total Value Of Benefit	\$ 138,644			

27K

May 23, 2022

Board of City Commissioners
City Hall
Fargo, ND 58102

RE: New Industry Exemption for Weather Modification, LLC.

Dear Commissioners:

Attached is the application made by Weather Modification, LLC. for a 5 year, new industry property tax exemption, according to N.D.C.C. Chapter 40-57.1. This application is for a new building to house a business expansion that would provide aircraft modification services. The project has been certified as primary sector.

Notices to competitors have been published. The Economic Development Incentive Committee has met to consider this application. No potential competitors appeared at the Economic Development Incentive Committee meeting. This project meets our current policy. The application contains information regarding projected value of the project upon completion, the nature of jobs to be created, and a description of the service to be provided. The applicant will pay the full land taxes, once the leased lot is split from the main parcel.

The recommendation of the Economic Development Incentive Committee is to approve a 5-year tax exemption.

SUGGESTED MOTION:

Approval of a 5-year, 100% new industry property tax exemption for Weather Modification, LLC located at 3802 20 St N.

Sincerely,

Mike Splonskowski
City Assessor

Application For Property Tax Incentives For New or Expanding Businesses

N.D.C.C. Chapter 40-57.1

Project Operator's Application To Fargo

City or County

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a non-voting member in the negotiations and deliberation of this application.

This application is a public record

Identification Of Project Operator

1.	Name of project operator of new or expanding business <u>Weather Modification LLC</u>
2.	Address of project <u>3802 20th St N</u>
	City <u>Fargo</u> County <u>Cass</u>
3.	Mailing address of project operator <u>3802 20th St N</u>
	City <u>Fargo</u> State <u>ND</u> Zip <u>58102</u>
4.	Type of ownership of project
	<input type="checkbox"/> Partnership <input type="checkbox"/> Subchapter S corporation <input type="checkbox"/> Individual proprietorship
	<input type="checkbox"/> Corporation <input type="checkbox"/> Cooperative <input checked="" type="checkbox"/> Limited liability company
5.	Federal Identification No. or Social Security No. [REDACTED]
6.	North Dakota Sales and Use Tax Permit No. [REDACTED]
7.	If a corporation, specify the state and date of incorporation <u>1/1/2016</u>
8.	Name and title of individual to contact <u>James P. Sweeney</u>
	Mailing address <u>3802 20th St N</u>
	City, State, Zip <u>Fargo, ND 58102</u> Phone No. <u>701-371-4061</u>

Project Operator's Application For Tax Incentives

9. Indicate the tax incentives applied for and terms. Be specific.	
<input checked="" type="checkbox"/> Property Tax Exemption <u>5</u> Number of years <u>100</u> Percent of exemption	<input type="checkbox"/> Payments In Lieu of Taxes Beginning year _____ Ending year _____ Amount of annual payments (attach schedule if payments will vary)
10. Which of the following would better describe the project for which this application is being made:	
<input type="checkbox"/> New business project	<input checked="" type="checkbox"/> Expansion of a existing business project

-|-

Description of Project Property**11. Legal description of project real property**~~Lots 1 & 2 located in the North Half of Section 24, Township 140 North, Range 49 West, Cass County, ND~~**12. Will the project property be owned or leased by the project operator?** ☐ Owned ☒ Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?

☒ Yes ☐ No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

13. Will the project be located in a new structure or an existing facility? ☒ New construction ☐ Existing facility

If existing facility, when was it constructed? _____

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application July 1, 2022

b. Description of project to be constructed including size, type and quality of construction

Hangar space 50,351 SF; Tech space 19,790; Office space 31,036; Storage space 10,984Total new SF 112,261. Construction is high quality steel structural and exterior.c. Projected number of construction employees during the project construction 110**14. Approximate date of commencement of this project's operations** 11/1/2023**15. Estimated market value of the property used for this project:**a. Land \$ 0b. Existing buildings and structures for which an exemption is claimed..... \$ 0c. Newly constructed buildings and structures when completed \$ 22,000,000d. Total \$ 22,000,000e. Machinery and equipment \$ 350,000**16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:**a. Land (not eligible) b. Eligible existing buildings and structures \$ 0c. Newly constructed buildings and structures when completed \$ 1,100,000d. Total taxable valuation of property eligible for exemption (Add lines b and c)..... \$ 1,100,000e. Enter the consolidated mill rate for the appropriate taxing district 0.29601
~~0.30~~f. Annual amount of the tax exemption (Line d multiplied by line e) \$ 325,611.00

Description of Project Business

Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.

17. Type of business to be engaged in: ☐ Ag processing ☒ Manufacturing ☐ Retailing
☐ Wholesaling ☐ Warehousing ☒ Services
18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).
1. Provides aircraft modification services (i.e. VIP Transport, Photographic Equipment, Remote Sensing, Environmental Monitoring, Telemetry, Atmospheric Chemistry, Cloud Physics Measurements, Air Ambulance, Cloud Seeding) for cloud seeding and cloud physics with equipment built at our Fargo facility.
2. Provides installation services of flare racks and cloud physics research equipment on aircraft for customers around the
19. Indicate the type of machinery and equipment that will be installed
- Paint booth, overhead crane, aircraft jacks, tooling, aircraft tug, power cart, towbars
20. For the project only, indicate the projected annual revenue, expense, and net income (before tax) from either the new business or the expansion itself for each year of the requested exemption.

	New/Expansion Project only Year 1	New/Expansion Project only Year 2	New/Expansion Project only Year 3	New/Expansion Project only Year 4	New/Expansion Project only Year 5
Year (12 mo. periods)					
Annual revenue	<u>8,200,000</u>	<u>8,600,000</u>	<u>9,100,000</u>	<u>9,700,000</u>	<u>10,500,000</u>
Annual expense	<u>7,700,000</u>	<u>8,050,000</u>	<u>8,500,000</u>	<u>9,050,000</u>	<u>9,800,000</u>
Net income	<u>500,000</u>	<u>550,000</u>	<u>600,000</u>	<u>650,000</u>	<u>700,000</u>

21. Projected number and salary of persons to be employed by the project for the first five years:

Current positions & positions added the initial year of project

# Current Positions	New Positions Under \$13.00	New Positions \$13.01-\$15.00	New Positions \$15.01-\$20.00	New Positions \$20.01-\$28.00	New Positions \$28.01-\$35.00	New Positions Over \$35.00
54				3	3	2

Year	(Before project)	Year 1	Year 2	Year 3	Year 4	Year 5
No. of Employees	(1) <u>54</u>	<u>62</u>	<u>68</u>	<u>72</u>	<u>76</u>	<u>80</u>
	(2) <u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Estimated payroll	(1) <u>3356000</u>	<u>3789000</u>	<u>4138000</u>	<u>4388000</u>	<u>4654000</u>	<u>4937000</u>
	(2) <u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

(1) - full time
(2) - part time

Previous Business Activity

22. Is the project operator succeeding someone else in this or a similar business? ☐ Yes ☒ No
23. Has the project operator conducted this business at this or any other location either in or outside of the state?
☐ Yes ☒ No
24. Has the project operator or any officers of the project received any prior property tax incentives? ☒ Yes ☐ No
If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).

~~Weather Modification Inc. received 5-year property tax exemption in 2014 for new hangar construction~~

Business Competition

25. Is any similar business being conducted by other operators in the municipality? ☐ Yes ☒ No
If YES, give name and location of competing business or businesses

Percentage of Gross Revenue Received Where Underlying Business Has ANY Local Competition %

Property Tax Liability Disclosure Statement

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it? ☐ Yes ☒ No
27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? ☐ Yes ☒ No

If the answer to 26 or 27 is Yes, list and explain

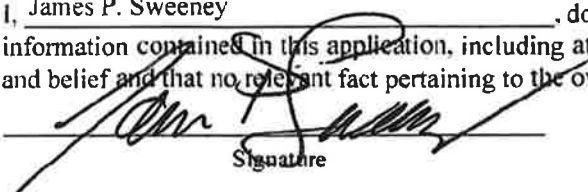
Use Only When Reapplying

28. The project operator is reapplying for property tax incentives for the following reason(s):
- ☐ To present additional facts or circumstances which were not presented at the time of the original application
 - ☐ To request continuation of the present property tax incentives because the project has:
 - ☐ moved to a new location
 - ☐ had a change in project operation or additional capital investment of more than twenty percent
 - ☐ had a change in project operators
 - ☐ To request an additional annual exemption for the year of _____ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

Notice to Competitors of Hearing

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, James P. Sweeney, do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.


Signature

Vice President

Title

4-22-2022

Date

Business Incentive Agreement

1. In fulfillment of the requirements of N.D.C.C. § 54-60.1-03, Grantor and Recipient enter into this Business Incentive Agreement.

Grantor

Name	City of Fargo
Address	225 4th Street North Fargo, ND 58102

Recipient

Name	Weather Modification LLC		
Address	3802 20th St N, Fargo, ND 58102		
Contact Person	James P. Sweeney	E-mail Address	jim@weathermod.com
Recipient Parent Company (If applicable)	SFH, Inc		
Business Type (NAICS Code)	541990		
Location of Recipient Prior to Receiving Incentive (If different)			

2. Description of project.

Hangar space 50,351 SF; Tech space 19,790; Office space 31,036; Storage space 10,984
Total new SF 112,261. Construction is high quality steel structural and exterior.

3. Grantor(s) agrees to provide recipient with a business incentive described as follows:

--

3.a. Is this incentive tax increment financing? ☐ Yes ☐ No

If yes, describe the type of district:

--

4. The business incentive will be provided on _____.
This date is the benefit date.

5. The public purpose(s) of the business incentive are:

☐ Assisting community development☐ Increase tax base☒ Directly create employment opportunities☒ Indirectly increase employment opportunities☒ Job retention☐ Other _____

6. Value of Business Incentive: \$ _____

7. Recipient currently employs 54 people, located in Fargo, ND.8. In return for the business incentive, Recipient shall, within two years create: 14
Number of full-time equivalent jobs

\$28	+	\$8.40	=	\$36.40
Average hourly wage		Benefits per hour value		Average hourly compensation

9. The Recipient shall continue operations in the jurisdiction in which the business incentive was issued for five years or more after the benefit date.

10. Recipient shall file a recipient report with the Grantor, as described in N.D.C.C. § 54-60.1-05 annually on or before March 1st of each year for two years, beginning in 2007, following the benefit date or until the goals of paragraph 8 are met, whichever is later.

10.a. Grantor shall mail the recipient a warning letter if no report is received by March 8th. Recipient shall file the progress report within 14 days of the postmarked date of the warning letter.

10.b. If a recipient report is not received within 14 days of the warning letter, Recipient agrees to pay to Grantor a \$100 penalty for each subsequent day until the report is filed. The maximum penalty under this section may not exceed \$1,000.

11. Recipient shall pay back the value of the incentive to the Grantor, prorated to reflect any partial fulfillment of the job and compensation goals, if, after two years, the job and compensation goals listed in paragraph 8 are not met.

- 11.a. Paragraph 11 does not apply if the job and compensation goals were not met as a result of an act of God or terrorism.
12. This business incentive agreement shall only be modified or extended by the Grantor pursuant to N.D.C.C. § 54-60.1-04.
13. If the terms of this business incentive agreement are not met, Recipient shall not receive a business incentive from any grantor for five years from the date of failure or until a recipient satisfies the repayment obligation.
14. The Recipient has disclosed, in attachment "A" of this agreement, all additional financial assistance received from state or political subdivision Grantors for this project since inception.
15. By signing this agreement, Recipient verifies that it has not failed to meet the terms of any business incentive agreement in the last five years.

Dated this _____ day of _____, 20 ____.

Grantor: _____ on behalf of _____

Dated this 22 day of APRIL, 2022.

Recipient: [Signature] on behalf of WEATHER Modification LLC



April 25, 2022

James Sweeney
Weather Modification LLC
3802 20th St. N
Fargo, ND 58102

Dear James:

Thank you for your application for primary-sector certification by the North Dakota Department of Commerce, Economic Development & Finance Division. We have reviewed your application and determined that ED&F can certify your company, **Weather Modification LLC**, as primary sector and a new wealth creator in the economy of North Dakota. This certification is valid for **four years (4/25/2022 to 4/25/2026)**.

Most of North Dakota's economic development programs, tools and incentives are targeted toward primary-sector clients. You may be requested to provide a copy of this primary-sector certification letter when you apply for certain economic development incentive and funding programs.

This certification does not guarantee the receipt of any North Dakota business incentive. For example, there are additional qualification criteria for the Seed Capital Investment and Agricultural Business Investment personal income tax credits, and it is critical that investments **NOT** be made prior to the business receiving certification for these two credits. If you are pursuing certification for investment tax credits and need to know the criteria required for qualification, contact Joseph Mwagura at 701-328-5367.

This certification is not the application process for the North Dakota New Jobs Training Program administered by Job Service North Dakota. To apply for the North Dakota New Jobs Training Program, you must contact Job Service North Dakota for the required application forms. Application forms for other programs that require primary sector certification are available from the agency administering the program.

Also, companies and individuals pursuing the investment tax credit incentive are reminded there is a cap on available dollars. Please visit with the ND Office of the Tax Commissioner regarding the remaining balance for investment tax credits. The credits are available on a first-come-first-serve basis until the law-defined cap is met.

North Dakota appreciates your contribution to the citizens and economy of our state. If there is anything further we can do to assist your company, please contact us at 701-328-5300.

Sincerely,



Joshua Teigen, Director
Economic Development & Finance Division

1600 E Century Avenue, Suite 6 | P.O. Box 2057 | Bismarck, ND 58502

PHONE: 701-328-5300 | TOLL FREE: 1-866-4DAKOTA | ND RELAY TTY: 1-800-366-6888 | VOICE: 1-800-366-6889 |
NDCommerce.com

Exemption Evaluation Calculator				166.1		175.2	
Weather Modification				Points		Points	
Project Type Code	Year 1	1	38.0	Year 3	1	38.0	
Current Number Of Employees		54			54		
Hourly Salary Without Benefits	# Jobs			# Jobs			
Under \$13.00							
\$13.01-\$15.00							
\$15.01-\$20.00							
\$20.01-\$28.00	3	Pts. For # Jobs->	10.0	8	Pts. For # Jobs->	25.0	
\$28.01-\$35.00	3	Pts. For \$ Jobs->	43.1	8	Pts. For \$ Jobs->	37.2	
Over \$35.00	2			2			
TOTAL # OF JOBS CREATED	8			18			
Primary Sector?		y			y		
% GI w/ Local Competition (not downtown)		0%	25.0		0%	25.0	
Value of Proposed Buildings		\$ 22,000,000	50.0		\$ 22,000,000	50.0	
Downtown Location (Y/N)		N	0.0		N	0.0	
Startup Firm (Y/N)		N	0.0		N	0.0	
Has Const Started or Has Bldg Been Leased or Occupied If Existing (Y/N)		N	0.0		N	0.0	
Number of Years (Exemption)		5			5		
Company Safety Experience Rating			0.0			0.0	
RECOMMENDATION IS TO			APPROVE	APPROVE			
Description	Manufacturing			Description	Manufacturing		
Estimated New Annual Payroll	\$499,200			Estimated New Annual Payroll	\$1,081,600		
Estimated Annual Real Estate Tax	\$325,611			Estimated Annual Real Estate Tax	\$325,611		
Property Value / # of Jobs	\$ 2,750,000			Property Value / # of Jobs	\$ 1,222,222		
Total Value Of Benefit	\$ 1,628,055			Total Value Of Benefit	\$ 1,628,055		

REPORT OF ACTIONUTILITY COMMITTEE

28

Project No. NA

Type: Landfill Gas Purchase and
Sales Agreement with Cargill, Inc.

Location: Solid Waste Division – Administration

Date of Hearing: 5/5/2022

<u>Routing</u>	<u>Date</u>
City Commission	5/31/2022
Project File	

Terry Ludlum presented the attached proposed renewal of a **Landfill Gas Purchase and Sales Agreement** between Cargill Incorporated (Cargill) and the City of Fargo. The proposal has a ten-year term and involves landfill gas (LFG) capture, partial treatment, and direct delivery via an existing pipeline from the landfill to the Cargill Oilseed Processing plant located in West Fargo.

In 2001, the City of Fargo and Cargill began discussions involving the City's potential development of a landfill gas collection system to address landfill odors, and Cargill's desire to utilize the captured gas as a boiler fuel in their 24-hour per day oilseed operation. The negotiations resulted in the original 20-year Landfill Gas and Sales Agreement, which is set to expire on May 20, 2022. The agreement included the defining terms of LFG quality standards, measurement protocol, sale and purchase quantity, sale and purchase pricing, and the installation of additional piping and equipment from the landfill to Cargill.

The most significant negotiated topic within the renewal included defining an equitable pricing structure of the LFG based on overall energy value and a comparative pricing structure with the monthly natural gas energy sector. The original agreement utilized a formula to calculate MMBtu's with a set methane content of 45%, while the proposed agreement would utilize actual monthly methane averages. The MMBtu value would be derived using a monthly natural gas trade rate and the monthly settlement price would then be the total MMBtu's multiplied by 50% of the rate as provided by the buyer. The main emphasis of the renewal negotiations was to compensate the seller at a similar level to the buyer's energy offset savings while in comparison to ongoing natural gas markets. The proposal also incentivizes the seller to provide maximum gas quality (methane content) and maximum gas quantity (cubic feet per minute) which will result in increased revenues for the seller and increased offset savings for the buyer.

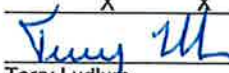
Given that the City of Fargo and Cargill Industries have had an economically and environmentally successful renewable energy relationship through the original 20-year agreement, and that the proposed 2022 agreement provides additional revenue incentives, Solid Waste Division staff would recommend approval of the attached **Landfill Gas Purchase and Sales Agreement** between Cargill Incorporated (Cargill) and the City of Fargo.

MOTION:

On a motion by Troy Hall, seconded by Scott Liudahl, the Utility Committee voted to approve the attached ten (10) year **Landfill Gas Purchase and Sales Agreement** between Cargill Incorporated (Cargill) and the City of Fargo.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Anthony Gehrig, City Commissioner				X
Bruce Grubb, City Administrator	X	X		
Brenda Derrig, City Engineer		X		Tom Knakmuhs
Steve Sprague, Acting Director of Finance	X	X		
Brian Ward, Water Plant Supt.	X	X		
Mark Miller, Wastewater Plant Supt.	X	X		
Scott Liudahl, City Forester	X	X		
Terry Ludlum, Solid Waste Utility Director	X	X		
Scott Olson, Solid Waste Utility Engineer	X	X		
James Hausauer, Wastewater Util. Director	X	X		
Troy Hall, Water Utility Director	X	X		
Ben Dow, Public Works Operations Director	X	X		

ATTEST:


Terry Ludlum
Solid Waste Utility Director

C: Tim Mahoney, Mayor
Commissioner Preston
Commissioner Plepkorn
Commissioner Strand

Memorandum

To: Utility Committee

From: Terry Ludlum, Solid Waste Utility Director
Scott Olson, Solid Waste Utility Engineer

Date: April 28, 2022

Subject: Landfill Gas Purchase and Sale Agreement with Cargill, Incorporated

TL
SO

Attached for your review and consideration is a proposed renewal of a ***Landfill Gas Purchase and Sales Agreement*** between Cargill Incorporated (Cargill) and the City of Fargo. The proposal has a ten-year term and involves landfill gas (LFG) capture, partial treatment, and direct delivery via an existing pipeline from the landfill to the Cargill Oilseed Processing plant located in West Fargo.

BACKGROUND: In 2001, the City of Fargo and Cargill began discussions involving the City's potential development of a landfill gas collection system to address landfill odors, and Cargill's desire to utilize the captured gas as a boiler fuel in their 24-hour per day oilseed operation. The negotiations resulted in the original 20-year Landfill Gas and Sales Agreement, which is set to expire on May 20, 2022. The agreement included the defining terms of LFG quality standards, measurement protocol, sale and purchase quantity, sale and purchase pricing, and the installation of additional piping and equipment from the landfill to Cargill.

The difficulty of establishing a purchase price structure within the original contract was the unknown market rate volatility of an applicable comparative fuel (natural gas) throughout the 20-year term. Given that natural gas prices were approximately \$3.00/MMBtu at the time, the original negotiated purchase price was set at \$1.00 /MMBtu for the first 100,000 MMBtu's, purchased on an annual basis and then \$0.50/MMBtu thereafter. Results of the original gas collection system and agreement showed a substantial reduction of landfill odors, steady annual landfill revenues (\$100,000/year) and significant energy offset costs for Cargill.

As defined within the original agreement, City staff and Cargill staff were to begin negotiations of a potential renewal within 18 months of the expiration and those negotiations have led to development of the proposed 2022 agreement.

The most significant negotiated topic within the renewal included defining an equitable pricing structure of the LFG based on overall energy value and a comparative pricing structure with the monthly natural gas energy sector. The original agreement utilized a formula to calculate MMBtu's with a set methane content of 45%, while the proposed agreement would utilize actual monthly methane averages (2021 annual average was 52%).

ORIGINAL AGREEMENT:

$$\text{MMBtu} = \frac{(\text{cubic feet of LFG measured by the Facility Meter}) \times (0.45) \times (900^{**})}{1,000,000}$$

2022 PROPOSED AGREEMENT:

$$\text{MMBtu} = \frac{(\text{cubic feet of LFG measured by the Facility Meter}) \times (\text{Average CH}_4 \text{ for given month}) \times (900^{**})}{1,000,000}$$

*Cargill meter

**Heating value of LFG in BTU's per standard cubic foot

Once the monthly overall energy of the delivered LFG is calculated, the MMBtu value would be derived using a monthly natural gas trade rate (found online via CME Group). The monthly settlement price would then be the total MMBtu's multiplied by 50% of the natural gas trade rate for the following month as provided by the buyer.

The main emphasis of the 2022 renewal negotiations was to compensate the seller at a similar level to the buyer's energy offset costs while in comparison to ongoing natural gas markets. The proposal also incentivizes the seller to provide maximum gas quality (methane content) and maximum gas quantity (cubic feet per minute) which will result in increased revenues for the seller and increased offset costs for the buyer.

Given that the City of Fargo and Cargill Industries have had an economically and environmentally successful renewable energy relationship through the original 20-year agreement, and that the proposed 2022 agreement provides additional revenue incentives, Solid Waste Division staff would recommend approval of the attached ***Landfill Gas Purchase and Sales Agreement*** between Cargill Incorporated (Cargill) and the City of Fargo

Your consideration in this matter is greatly appreciated.

SUGGESTED MOTION

Approve the attached ten (10) year ***Landfill Gas Purchase and Sales Agreement*** between Cargill Incorporated (Cargill) and the City of Fargo.

LANDFILL GAS PURCHASE AND SALE AGREEMENT

This Landfill Gas Sales Agreement ("Agreement") dated May 20, 2022 is made between Cargill Incorporated, a Delaware corporation ("Buyer") and The City of Fargo, North Dakota ("Seller").

WHEREAS, Seller owns and operates a municipal landfill ("Landfill") at the intersection of 45th Street North and 7th Avenue North in Fargo, North Dakota; and

WHEREAS, the Landfill is producing certain gases resulting from the natural anaerobic decomposition of refuse material ("Landfill Gas") and Seller desires to capture and dispose of the Landfill Gas in an environmentally and economically prudent fashion; and

WHEREAS, Buyer owns and operates an oilseed processing facility (the "Facility") in West Fargo, North Dakota which is located approximately two miles from the Landfill, which facility utilizes one or more burners currently fueled by natural gas; and

WHEREAS, Seller desires to sell and deliver the Landfill Gas produced at the Landfill to Buyer's Facility and to construct facilities to extract, handle, flare, and transport the Landfill Gas; and

WHEREAS, Buyer desires to purchase from Seller the Landfill Gas produced at the Landfill for use as fuel in one or more burners at the Facility.

NOW, THEREFORE, in consideration of the premises and the mutual promises hereinafter set forth, Seller agrees to sell and Buyer agrees to purchase Landfill Gas upon the terms and conditions set forth in this Agreement.

Article I Definitions

Unless otherwise required by the context in which any defined term appears, the following terms shall have the meaning assigned to them in this Article 1 for all purposes including the recitals:

1.1 **BTU** means British Thermal Units or the amount of heat required to raise the temperature of one pound of water one (1) degree Fahrenheit at sixty (60) degrees Fahrenheit.

1.2 **MMBTU** means million BTU (also known as a decatherm), and for purposes of this Agreement, MMBTU shall be calculated according to the following formula:

$$MMBTU = \frac{[cubic\ feet\ of\ Landfill\ Gas\ as\ measured\ by\ the\ Facility\ Meter] \times [Average\ CH_4\ for\ given\ month] \times [900]}{1,000,000}$$

1.3 **Facility Meter** means the meter installed by Buyer at the building housing Buyer's boilers at the Facility which will be used to measure the quantity of Landfill Gas purchased by Buyer under this Agreement and burned in the burner(s) at Buyer's Facility.

1.4 **Delivery Point** means the location of the Facility Meter in Buyer's Facility as described in section 1.3 above.

1.5 **Force Majeure** means acts of God; explosions; strikes, lockouts or other industrial disturbances; acts of the public enemy; wars, blockades; insurrections; riots, epidemics; landslides; lightening; earthquakes; damage to or destruction of Seller's landfill gas wells caused by third parties (except as otherwise provided below); enactment of statutes, laws or regulations, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, or any other cause, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. Any event which causes damage to or destruction of Seller's landfill gas wells shall not be a Force Majeure where such event occurs more than two (2) times in any rolling 12 month period, after which such events, if causing a Loss of Landfill Gas, will be counted as either an **Unscheduled Interruption** or a **Scheduled Interruption**, provided the other requirements of the definitions for such interruptions are present.

1.6 **Hazardous Materials** means all materials which have been determined to be hazardous to health or the environment by virtue of being defined by the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, regulated by the Toxic Substances Control Act, the Federal Insecticide, Fungicide, and Rodenticide Act, or regulated by any other applicable federal, state or local law. Reference to specific statutes include amendments as they are made from time to time, as well as the regulations promulgated thereunder.

1.7 **Landfill Gas** means any and all gases resulting from the anaerobic decomposition of refuse material within the Landfill, consisting principally of methane, carbon dioxide and traces of other constituent gases.

1.8 **Average CH₄** means the monthly average of the daily methane (CH₄) readings provided by the Seller as measured at the Seller's Methane Analyzer

1.9 **Seller Methane Analyzer** refers to the Seller's "XMTC Panametrics Thermal Conductivity Binary Gas Transmitter" located at the Seller's landfill gas collection building that measures the concentration, or quality, of the landfill gas being delivered to Buyer.

1.10 **Renewable Energy Attributes** means all Seller owned redeemable and not-redeemable credits, units or measureable emission reductions generated through the Landfill Gas treatment facility owned and operated by the Seller.

Article II - Construction of Landfill Gas Equipment and Facilities

2.1 Pipeline, Equipment and Facilities --

(a) Seller shall be solely responsible and liable for operating, maintaining and repairing any and all equipment and facilities located on its property and used to extract, capture, handle, store and/or transport the Landfill Gas from the Landfill to the western edge of Seller's property at 9th Street East in West Fargo ("Seller's Equipment"). Seller shall be fully and solely responsible and liable for operating, maintaining and repairing Seller's Equipment, (including the Buyer Paid Pipeline), and shall be deemed the operator of such pipeline and equipment for purposes of the North Dakota One Call Law (ch. 49-23). Seller shall indemnify and hold Buyer harmless from and against any and all claims, actions, losses, damages and expenses relating to or arising from Seller's ownership, use, operation, repair and/or maintenance of Seller's Equipment (including the Buyer Paid Pipeline).

(b) Seller shall be fully and solely responsible and liable for operating, maintaining and repairing the Buyer Paid Pipeline.

(c) In consideration of Seller's promises and agreements to sell Landfill Gas to Buyer as set forth in this Agreement, Buyer hereby sells and transfers to Seller and Seller hereby purchases and accepts from Buyer, that portion of the Buyer Paid Pipeline running from the western edge of Seller's property at 9th Street East in West Fargo to the eastern boundary of Buyer's property at the Facility (this portion of the Buyer Paid Pipeline is referred to as "Other Property Pipeline"). For all purposes under this Agreement, commencing on the date of this Agreement, the Other Property Pipeline is and shall be construed as being part of Seller's Equipment as defined in section 2.1(a) above, and Seller shall have the same responsibilities and liabilities for the Other Property Pipeline as it does for the rest of Seller's Equipment. The remaining portion of the Buyer Paid Pipeline, being that portion of the Pipeline located on Buyer's property at the Facility (ie. running from the eastern boundary of Buyer's property to the Facility Meter) shall remain owned by Buyer.

2.2 Mutual Support. Each party shall exercise reasonable efforts to support and assist the other party in fulfilling the obligations described above. Such support shall include participating necessary regulatory proceedings and providing information concerning each party's operations.

Article III - Sale and Purchase of Landfill Gas

3.1 Sale and Purchase; Quantity — Except as provided in section 3.2 below, Seller shall make available to Buyer for purchase an agreed upon amount of the Landfill Gas that Seller extracts from the Landfill. It is the mutual expectation of Seller and Buyer that the Landfill will generate, and Seller will make available to Buyer, those quantities of Landfill Gas as

described in section 5.1 (a) Seller agrees to deliver and sell to Buyer and Buyer agrees to accept and purchase from Seller that quantity of Landfill Gas as desired by Buyer and actually used by Buyer for fuel in the burner(s) in Buyer's Facility, provided that Buyer shall be obligated to purchase and/or pay for at least One Thousand Dollars (\$1,000) worth of Landfill Gas annually and Seller shall not be obligated to sell and deliver more than the entire quantity of Landfill Gas that Seller extracts from the Landfill.

3.2 Annual Declaration by Buyer. Starting on May 1, 2022 and continuing on May 1st of each following year during the term of this Agreement, Buyer shall advise Seller in writing whether Buyer intends to take and purchase Landfill Gas from Seller during the following June 1-May 31 period. If Buyer elects to purchase Landfill Gas from Seller during such annual period, (a) Seller shall make the agreed upon quantity of Landfill Gas generated from the Landfill available to Buyer, and (b) Buyer shall not resell to others any of the Landfill Gas purchased hereunder. If Buyer elects not to purchase any Landfill Gas from Seller during such annual period, Buyer shall remain obligated to pay Seller the minimum annual fee of \$1,000 as provided under section 3.1.

3.3 Flaring Excess Landfill Gas — Unless Buyer elects not to purchase Landfill Gas as described in the preceding paragraph, at its sole cost and expense, Seller agrees that it will burn off at the Landfill (also referred to as "flaring") all Landfill Gas that is collected at the Landfill but is not sold and delivered to Buyer and/or cannot be stored at the Landfill or utilized in other ongoing operations by Seller. Seller shall be solely responsible and liable for constructing any necessary equipment to enable Seller to flare any Landfill Gas as well as for obtaining and complying with any required permits or approvals. Notwithstanding the foregoing, Seller may use any Landfill Gas not sold and delivered to Buyer (i.e. excess Landfill Gas that is available after satisfying Buyer's needs), Seller shall have the right to use such excess Landfill Gas for use in Seller's buildings, vehicles or equipment.

3.4 Price - For all Landfill Gas purchased and used by Buyer as fuel in the burner(s) at Buyer's Facility as measured by the Facility Meter, Buyer shall pay 50% of the settlement price of that agreement month as stated by **CME Group** at time trades for the following month are terminated. Buyer will supply Seller with final settlement price, along with necessary data of proof, by the last business day of contract month. Notwithstanding the foregoing, at no time shall the compensation to Seller per MMBTU be more than \$3.00 for the life of this agreement.

3.5 MMBTU Adjustment - The agreed pricing set forth in Section 3.4 above is based on the monthly average methane content of the Landfill Gas. Seller's Equipment shall include a meter for continuous monitoring and recording of percent methane content of the Landfill Gas, and on a daily basis, Seller will monitor and record the methane content of the Landfill Gas delivered to Buyer based on the readings from such meter. The actual daily methane content for that day will be used in the MMBTU formula set forth in Section 1.2 above in determining the number of MMBTU purchased during such month.

3.6 Invoices; Payment — Within ten (10) business days following the end of each month, Buyer will transmit to Seller the applicable Facility Meter readings for Landfill Gas delivered to Buyer during the preceding such month. Based on the flow readings from Buyer's Facility Meter and the methane readings from Seller's meter, Seller shall prepare and send to Buyer within 10 business days following receipt of the data from Buyer an invoice which shall be accompanied by a report showing daily amounts for flow, methane and MMBTUs. Buyer shall remit payment to Seller within 10 business days following receipt of Seller's invoices.

3.7 Errors in Billing - Should either party find at any time within one (1) year after the date of any invoice rendered by Seller that there has been an undercharge or an overcharge in the amount billed in the invoice, the party finding the error shall promptly notify the other party in writing. In the case of an undercharge, Seller shall submit a statement for such undercharge, and Buyer, upon verifying the same, shall pay such amount within thirty (30) days after receipt of the statement but without interest. In the case of an overcharge, Seller shall refund the amount of the overcharge to Buyer within thirty (30) days of notification by Buyer, but without interest. Neither Seller nor Buyer shall have any liability for any undercharge or overcharge relating to invoices over one (1) year old.

3.8 Renewable Energy Attributes – Will remain with the Seller and Buyer will have no right to claim the attributes. Buyer will cooperate with reasonable requests by the Seller to obtain data for verification and validation of such attributes. Seller agrees to pay for any additional equipment or costs necessary to obtain requested data of landfill gas usage.

Article IV - Term, Termination and Defaults

4.1 Term. Subject to the other provisions contained herein, this Agreement shall become effective on the date of its execution and shall continue in effect for a period of ten (10) years beginning on May 20, 2022 (the "Commencement Date") and expiring May 19, 2032. No later than one hundred eighty (180) days prior to expiration of this Agreement, the parties will enter into good faith negotiations for potentially renewing this Agreement on mutually agreeable terms.

4.2 Seller's Right to Terminate. Seller shall have the right to terminate this Agreement by written notice to Buyer submitted not later than thirty (30) days following the occurrence of any of the following:

- (a) Should Buyer commit a material breach of this Agreement and such breach remains uncured for 30 days following written notice of such breach from Seller;
- (b) Should Buyer fail to perform its obligations under this Agreement due to an event of Force Majeure which lasts longer than six (6) months
- (c) Should any involuntary proceeding be initiated against Buyer under the bankruptcy or insolvency laws, which involuntary proceeding remains undismissed for thirty (30) consecutive days, or in the event of the initiation by the Buyer of a voluntary proceeding under the bankruptcy or insolvency laws;
- (d) Should Seller elect to sell, shut down or otherwise cease operations at the Landfill.

4.3 Buyer's Right to Terminate. Buyer shall have the right to terminate this Agreement by written notice to Seller submitted not later than thirty (30) days following the occurrence of the following:

- (a) Should Seller commit a material breach of this Agreement and such breach remains uncured for 30 days following written notice of such breach from Buyer;
- (b) Should Seller fail to perform its obligations under this Agreement due to an event of Force Majeure which lasts longer than six months;
- (c) Should any involuntary proceeding be initiated against Seller under the bankruptcy or insolvency laws, which involuntary proceeding remains undismissed for thirty (30) consecutive days, or the initiation by Seller of a voluntary proceeding under the bankruptcy or insolvency laws,
- (d) Should the North Dakota Public Service Commission, or any other regulatory or legislative body, assert jurisdiction over Seller as a public utility and require that Buyer pay Seller or that Seller charge a greater price for Landfill Gas than that price set forth in Section 3.4.
- (e) Should Buyer elect to sell, shut down or otherwise cease operations at the Facility.

4.4 Conditions of Termination - In the event this Agreement is terminated by Seller under Section 4.2a or by Buyer under Section 4.3a, the party invoking its right to terminate shall be entitled to seek any available rights or remedies. In the event this Agreement is terminated pursuant to Sections 4.2b, 4.2c, 4.2d, 4.3b, 4.3c, 4.3d, or 4.3e, neither party shall have any further obligation to the other following such termination, except as provided in Article XIII. Notwithstanding such termination, Buyer shall remain obligated to pay Seller for all Landfill Gas used by Buyer prior to termination.

Article V - Landfill Gas Standards

5.1 Landfill Gas Standards - Seller makes the following warranties with respect to the Landfill Gas to be delivered to Buyer under this Agreement:

- (a) Quantity —Seller will make all reasonable efforts to provide Buyer no less than 700 CFM at any given time as measured at Seller's Facility.
- (b) Methane Content - 45% or greater (405-495 BTU/cf);

- (c) Sulphur Compounds - 1000 ppm maximum.
- (d) Chloride Compounds - 170 ppm maximum
- (e) NMOC's - less than 2400 ppm.
- (f) Pressure – Seller will make all good-faith efforts to meet or exceed minimal burner operational pressure requirements as provided from Buyer. Pressure will be measured at the Facility (before the regulator).
- (g) Moisture- dry at burner tip.

5.2 Quantity Warranty and Remedy. While Buyer and Seller acknowledge that Seller is not guaranteeing that any specific quantities of Landfill Gas will be delivered to Buyer, Seller shall operate the Landfill and Seller's Equipment in a prudent and efficient manner in order to attempt to provide Buyer with the projected quantity described herein. Seller shall take immediate measures to address and correct the breach and resume delivery of Landfill Gas to Buyer at or above the agreed upon quantity.

5.3 Landfill Gas Standard Warranty and Remedy. In the event Seller fails to make available to Buyer, the agreed upon quantity or necessary measure of Methane Content, Sulphur Compounds, Chloride Compounds, NMOC, Pressure and Moisture as described in Sections 5.1 (b)-(g), for each day that such failure exists, (1) Buyer shall have the right to discontinue acceptance and use of Landfill Gas until it received notification and assurances from Seller that Landfill Gas meet or exceeds these warranties, (2) Seller shall take immediate measures to address and correct the failure, and resume delivery of conforming Landfill gas to Buyer, and (3) Seller and Buyer shall engage in good farther negotiations to agree upon a price reduction, or other appropriate remedy to fairly compensate Buyer for any damages, losses, costs or lost opportunities caused by such failure.

5.4 Landfill Gas Testing by Seller. At an occurrence of one time per calendar year, Seller shall cause the Landfill Gas to be sampled and subjected to a comprehensive constituent analysis and promptly provide Buyer with copies of such reports.

Article VI - Landfill Gas Measurement

6.1 Facility Meter. Buyer shall install the Facility Meter to measure the Landfill Gas delivered to its Facility hereunder and actually burned in the burner(s) at its Facility. The Facility Meter shall include a flow meter capable of measuring the volume of Landfill Gas delivered each hour. Buyer shall provide Seller with access to the Facility Meter during normal business hours and upon reasonable advance notice from Seller.

6.2 Meter Tests. Buyer and Seller shall maintain their respective meters used to measure the Landfill Gas in good condition and repair, and shall have their respective meter inspected periodically by a reputable third party, but at least once each year. Copies of the inspection reports shall be made available to the other party upon request.

6.3 Meter Out of Service. If, for any reason, the Facility Meter is out of service or out of repair so that the amount of Landfill Gas delivered and used by Buyer cannot be ascertained or determined from its readings, the volume content of Landfill Gas delivered to Buyer during such period when the Facility Meter is out of service shall be determined by flow meters installed by Seller at the Landfill.

Article VII - Taxes

7.1 Taxes - Buyer shall be responsible only for normal state sales tax, if any, when billed. Seller shall be responsible for the payment of all excise, severance, occupation, and other taxes levied in respect to the Landfill Gas covered hereunder and the handling thereof prior to the delivery to Buyer.

Article VIII - Representations and Warranties

8.1 Representations and Warranties of Seller. Seller represents and warrants that:

- (a) This Agreement has been duly authorized by all necessary persons and bodies and Seller has full power and authority to enter into this Agreement and perform its obligations hereunder.
- (b) Seller is not a party to any litigation or subject to any judgment, order, or decree, or party to any other contract which would materially affect its performance of its obligation on under this Agreement.
- (c) Seller has full and unqualified title and/or authority to sell all Landfill Gas to be delivered to Buyer hereunder, and all of the Landfill Gas sold and delivered to Buyer is free from any and all liens, claims and encumbrances. Seller shall hold buyer harmless from and against all claims, suits, actions, damages, losses, costs and expenses of every kind and character arising from each and every claim of any and all persons against such Landfill Gas prior to its delivery at the Delivery Point.

8.2 Representations and Warranties of Buyer. Buyer represents and warrants that:

- (a) Buyer is a duly organized and validly existing corporation under the laws of the State of Delaware, with full power and authority to own the Facility and carry on its business in North Dakota.
- (b) This Agreement has been duly authorized and Buyer has full power and authority to enter into this Agreement and perform its obligations hereunder.
- (c) Buyer is not a party to any litigation, or subject to any judgment, order or decree, or party to any other contract, which would materially affect its performance of its obligations under this Agreement.

Article IX - Force Majeure

9.1 **Force Majeure** - If either party is rendered unable, wholly or in part, by a Force Majeure event to carry out its obligations under this Agreement, other than to make payment for amounts accrued, it is agreed that upon such party giving notice and reasonably full particulars of such Force Majeure event in writing to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected by such Force Majeure event, shall be suspended during the continuance of any inability so caused but for no longer period and such cause shall, as far as possible, be remedied with all reasonable dispatch. Force Majeure events shall so include in those instances where either party hereto is required to obtain permits or licenses from any governmental body to enable such party to perform hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such permits or licenses.

9.2 **Strikes and Lockouts** - It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party experiencing the strike or lockout or having the difficulty and, that the foregoing requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing party when such course is inadvisable in the discretion of the party having the difficulty.

Article X – Indemnity

10.1 **Buyer's Environmental Indemnification** - Buyer agrees to indemnify and hold Seller, its agents, contractors, subcontractors, employees or invitees harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses arising from or due to the presence of Hazardous Materials on Buyer's property either existing at the time of or which may have been brought to its property after the execution of this Agreement, provided that Buyer shall have no obligation under this Article 10.1 for Hazardous Materials which are introduced to or released on Buyer's property by Seller, its agents, contractors, subcontractors, employees or invitees.

10.2 Seller's Environmental Indemnity – To the extent allowed by law, Seller agrees to indemnify and hold Buyer, its agents, contractors, subcontractors, employees or invitees harmless from and against any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses arising from or due to the presence of Hazardous Materials in or on the Landfill or which may flow, diffuse, migrate, or percolate into, onto, or under the Landfill from neighboring property, or from the Landfill to neighboring property or ground water after this Agreement commences.

10.3 Seller's Indemnity – To the extent allowed by law, Seller shall indemnify, defend and hold harmless Buyer from and against any claims, loss, damages, liabilities, fines, penalties, cost, and expense, including court costs and reasonable attorneys' fees, incurred or suffered by Buyer

- (a) to the extent relating to the Landfill Gas while in Seller's control and possession,
- (b) for personal injury, death or property damage caused by Seller's or its agents' negligent acts or omissions arising from or relating to this Agreement, or
- (c) arising from claims or liens for labor performed or materials furnished for Seller's Landfill or relating to Seller's Equipment.

10.4 Buyer's Indemnity - Buyer shall indemnify, defend and hold harmless Seller from and against any claims, loss, damages, liabilities, fines, penalties, cost, and expense, including court costs and reasonable attorneys' fees, incurred or suffered by Seller

- (a) to the extent relating to the Landfill Gas while in Buyer's control and possession, or
- (b) for personal injury, death or property damage caused by Buyer's or its agents' negligent acts or omissions arising from or relating to this Agreement.
- (c) arising from claims or liens for labor performed or materials furnished for Buyer's Facility or relating to Buyer's Equipment.

10.5 Limitation of Liability — Notwithstanding any other term of this Agreement to the contrary, in no event shall either party be liable to the other with respect to any claim, whether based on contract, tort (including negligence), warranty, strict liability, implied warranty or otherwise, for any indirect, special, incidental or consequential loss or damage of any type, including but not limited to lost profits and damage to goodwill or reputation.

Article XI - Insurance

11.1 Insurance Coverage - Buyer and Seller shall each maintain the following insurance:

- (a) Commercial General Liability Insurance, including contractual liability with limits of at least \$2,000,000.
- (b) Auto Liability policies with combined single limits of \$1,000,000.
- (c) Worker's Compensation Insurance with statutory limits.
- (d) Employers Liability Insurance with liability limits of \$1,000,000.

11.2 Self-Insurance - Buyer and Seller shall have the right to self-insure any of the above exposures. Each party will (i) require their insurers to provide the other party with at least fifteen (15) days advance written notice of cancellation, and (ii) provide the other party with certificates of insurance evidencing the coverage and terms as required by this Article.

Article XII - Miscellaneous Provisions

12.1 Assignability. Except as otherwise provided, neither party may at any time transfer, assign or delegate its rights or duties under this Agreement without the express prior written consent of the other party; and the terms of this Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties.

12.2 Severability and Non-Waiver. In the event any sentence or section of this Agreement is declared by a court of competent jurisdiction to be void, such sentence or section shall be deemed severed from the remainder of this Agreement, and the balance of this Agreement shall remain in effect. Either party's waiver of any breach, or failure to enforce any of the terms and conditions of this Agreement, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel compliance with every term and condition of this Agreement or to terminate this Agreement for breach.

12.3 Notices. Any notice which is permitted or required under this Agreement shall be duly given if in writing and either delivered personally to the person whom it is required to be given or sent registered or certified mail, return receipt requested, postage prepaid as follows:

If to Buyer:

Cargill, Incorporated
250 7th Ave. North East
West Fargo, ND 58078
Attn: Facility Superintendent

with copy to:

Cargill, Incorporated
Law Department/24
15407 McGinty Rd West
Wayzata, MN 55391
Attn: CASCNA Attorney

If to Seller:

City of Fargo
2301 8th Avenue North
Fargo, North Dakota 58102
Attn: Solid Waste Utility Director

12.4 Access. Upon reasonable advance notice not less than 24 hours, each party agrees to provide the other, and its agents, representatives and contractors with access to its property and equipment during normal business hours (not including nights, weekends and holidays) for the purpose of inspection and carrying out its rights and obligations under this Agreement. While on Cargill's property, Seller, its agents and contractors shall at all times conduct themselves in a safe and prudent manner, and shall comply with all of Buyers environmental, health and safety rules and policies..

12.5 Counterparts. The Agreement may be executed in several counterparts, and as executed shall constitute one agreement binding on all of the parties hereto.

12.6 Captions. Captions in this Agreement are solely for the convenience of the parties and are not part of the Agreement, and shall not be used for the interpretation or determination of the validity of the Agreement or any provision thereof.

12.7 Entire Agreement. This Agreement constitutes the entire understanding between the parties with respect to the subject hereof.

12.8 Governing Law. This Agreement shall be governed by the substantive laws of the State of North Dakota, without reference to its conflicts of laws provisions.

12.9 Amendments. The Agreement and any part thereof may be amended at any time by mutual agreement of the parties. However, no modifications, alteration, amendment, or revision of this Agreement shall be binding upon either party unless executed in writing by the party to be bound.

12.10 Independent Contractors. Seller and Buyer are independent contractors. Neither party is or shall be deemed an agent, servant or employee of or a joint venturer with the other party, and neither party shall have the authority to incur debts or liabilities in the name of the other or otherwise bind the other party to any contract, debt or other obligation.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CARGILL, INCORPORATED

CITY OF FARGO, NORTH DAKOTA

By: _____

By: _____

Printed Name: _____

Printed Name: Timothy Mahoney

Title: _____

Title: City of Fargo Mayor

Attest

By: _____

Printed Name: Steve Sprague

Title: City of Fargo City Auditor



May 31, 2022

To: Board of City Commissioners
Fr: Michael Redlinger, Assistant City Administrator
Re: Wildlife Management Program Update

Background: In June, September, and November 2021, the City Commission discussed the future of the Fargo Wildlife Management Program. Following public input on the safety and efficacy of the program, the City Commission was requested, by Police Chief Zibolski, to consider the First Reading of an Ordinance Repealing Article 12-04 of the Fargo Municipal Code Relating to Wildlife Management Program Regulations. At the conclusion of discussion at its November 15, 2021 meeting on this item, the City Commission tabled the matter to allow time for discussions to continue with the North Dakota Game & Fish Department, Fargo Park District, and proponents of the Wildlife Management Program. City representatives participated in internal and external meetings in late 2021 and early 2022 to gauge the interest and capacity of partner organizations to support the continuation of the Wildlife Management Program in the City of Fargo, consistent with this direction.

Revised Program Proposed: At the May 31, 2022 City Commission meeting, City staff will provide an update from discussions with the organizations referenced above and offer a proposed framework for the continued operation of the Wildlife Management Program in 2022-23, if approved by the City Commission and Fargo Park District. As discussed in previous meetings, the Police Department desires to be removed from the operation and management of the program. In its place, it is proposed that the Sandhills Archery Club operate the 2022-23 program, with support and oversight provided by the Fargo Park District and City of Fargo. If approved by the City Commission and Park District, the three entities will collaborate to define roles, responsibilities, and parameters to operate the program this fall and winter. City staff proposes that an Agreement be drafted by the City Attorney's Office and executed between the entities to memorialize these procedures, should a revised program be approved.

Fargo Park District Recommendation: The Fargo Park District's Facilities Committee met on May 25, 2022 to discuss the continuation of the Wildlife Management Program on property owned and managed by the District. The full Park Board will consider the recommendation of the Facilities Committee to continue the District's support and hosting of the program; with the removal of three (3) parks outside of Fargo's city limits that had previously been utilized for the program (see attached Park District background materials). If approved by the Park District on June 14, 2022, the District will host the 2022-23 hunt on Park District properties.

Suggested Motion: Approve the 2022-23 Wildlife Management Program in partnership with the Fargo Park District and Sandhills Archery Club, contingent on the approval of the revised program by the Fargo Park District; Sandhills Archery Club; and the North Dakota Game & Fish Department. The City Attorney's Office is further authorized and directed to draft amendments to City Ordinances to revise the Wildlife Management Program in accordance with this arrangement.

Attachment: Fargo Park District Facilities Committee Background Materials
Sandhills Archery Club & ND Game & Fish Department Information



MEMORANDUM

DATE: May 25, 2022

TO: Fargo Park Board Facilities Committee

FROM: Craig Bjur, Project Manager

RE: Review proposed changes to Urban Hunting Program; Craig Bjur, presenter.

The Urban Hunting Program has been in existence since 2006. It currently is a program administered by the city of Fargo in cooperation with the North Dakota Game and Fish Department and the Park District. The program is designed to help control the urban deer herd within the city of Fargo.

On April 28th, 2022, staff attended a focus group meeting with members of the city administration and police as well as members of Sandhills Archery Club. The focus of the meeting was to discuss how the program may change in the future. At the meeting, the option of having Sandhill Archery Club take over the bulk of administering the program was discussed. Additionally, staff was asked what if any changes to the program from the Park District should be considered.

Recently staff has met internally and decided that we would like to propose a change to the areas where hunting is allowed. We would like to recommend the three nature parks, Orchard Glen, Forest River and Heritage Hills be removed from the program at this time. The three parks are outside of the city limits and thus do not fit with the objective of the program. Other proposed changes include requiring participants to use lighted nocks, increasing tree stand heights to minimum of 12 feet, and replacing current program signs with updated signage with access to online details on the program.

The Park District would still participate in training participants as well as assist with compliance checks in the field while our staff are doing their daily maintenance activities.

Attached to this memo is the current maps of the hunting units, the program regulations, a description of the training participants go through and statistics from the program over its history.

Staff recommends moving this recommendation to the full board for consideration of approval at the June 14th Park Board Meeting.

If you should have any questions, please feel free to contact me prior to the Meeting.

Thank you.

Dave Leker, Executive Director
PARK COMMISSIONERS – Vicki Dawson * Joe Deutsch * Stacey Griggs * Dawn Morgan * Jerry Rostad
CLERK – Jeff Gunkelman

City of Fargo Wildlife Management Program Training

Participants who successfully register must attend and pass a training class. The class consists of the following:

- An archery proficiency test in which the participant must shoot five arrows at a deer target from a distance of approximately 15 yards. A minimum of four of the participant's arrows must land in the vital area (heart/lungs) of the target in order to pass.
- A PowerPoint presentation by the Fargo Police Department and Fargo Park District covering the program details, city ordinance and safety considerations.
- A presentation by the North Dakota Bow Hunter's Association covering safety and hunting ethics.
- A twenty-question written test in relation to the information presented during the class. A participant must score 75% or higher (15 correct answers) in order to pass.

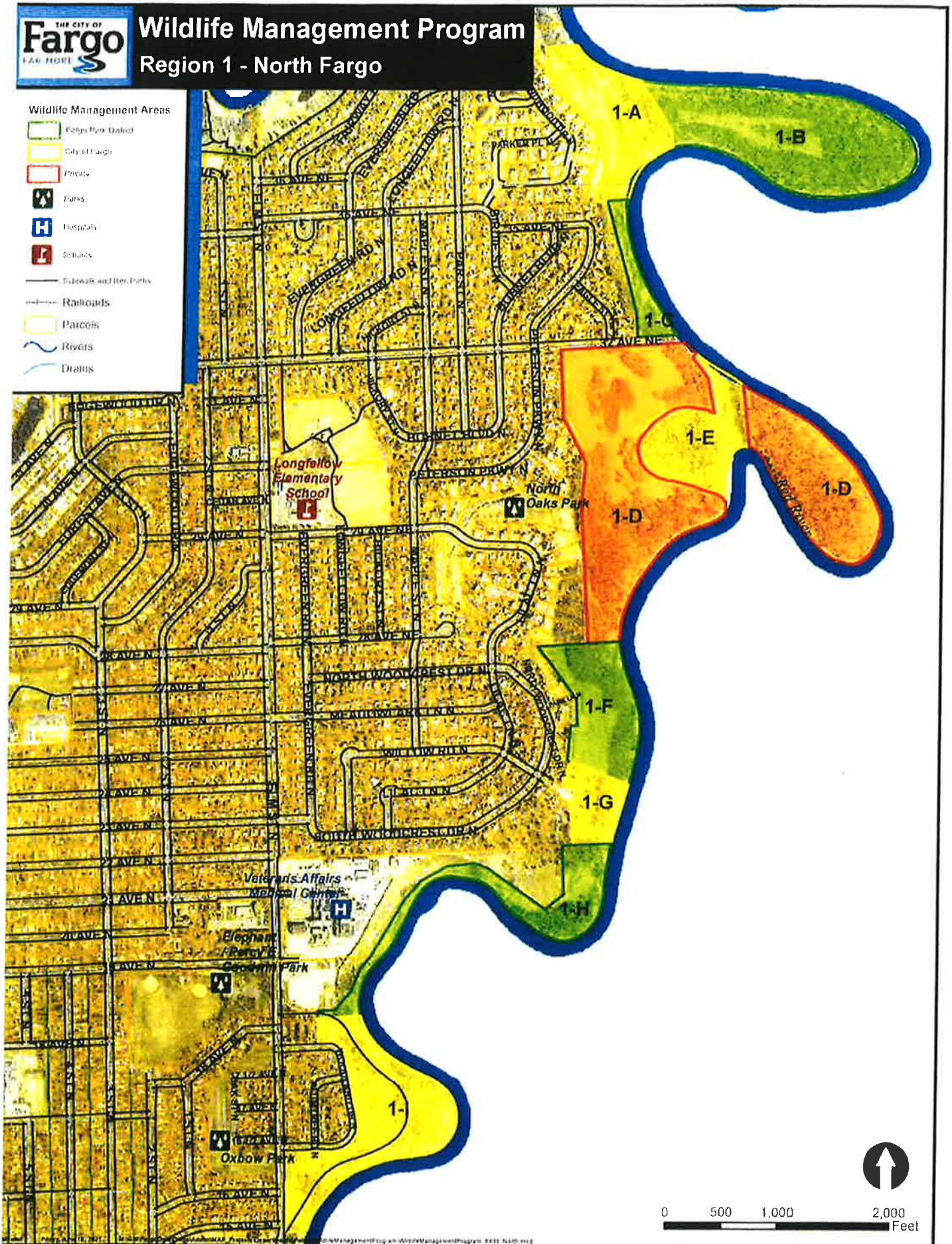


Wildlife Management Program

Region 1 - North Fargo

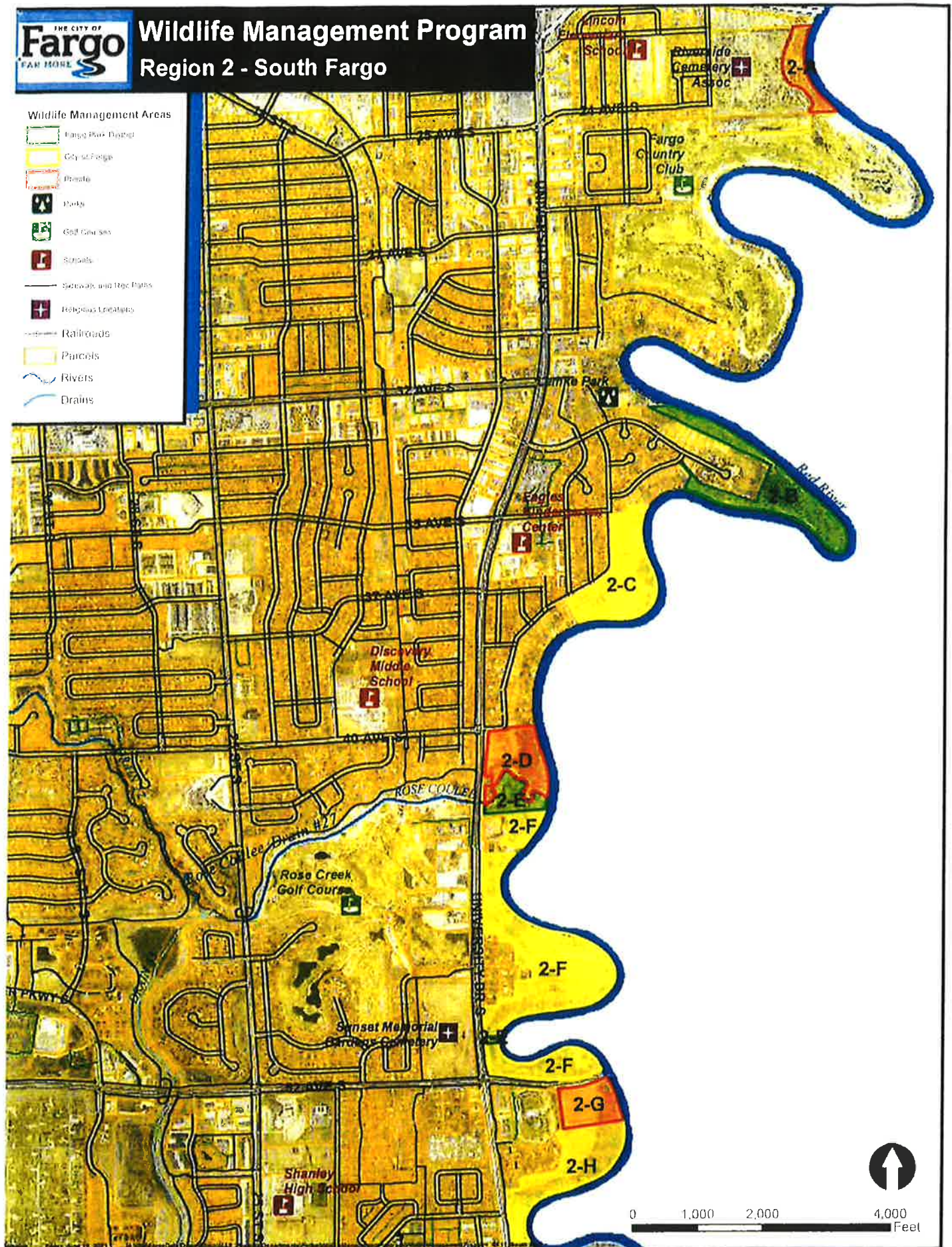
Wildlife Management Areas

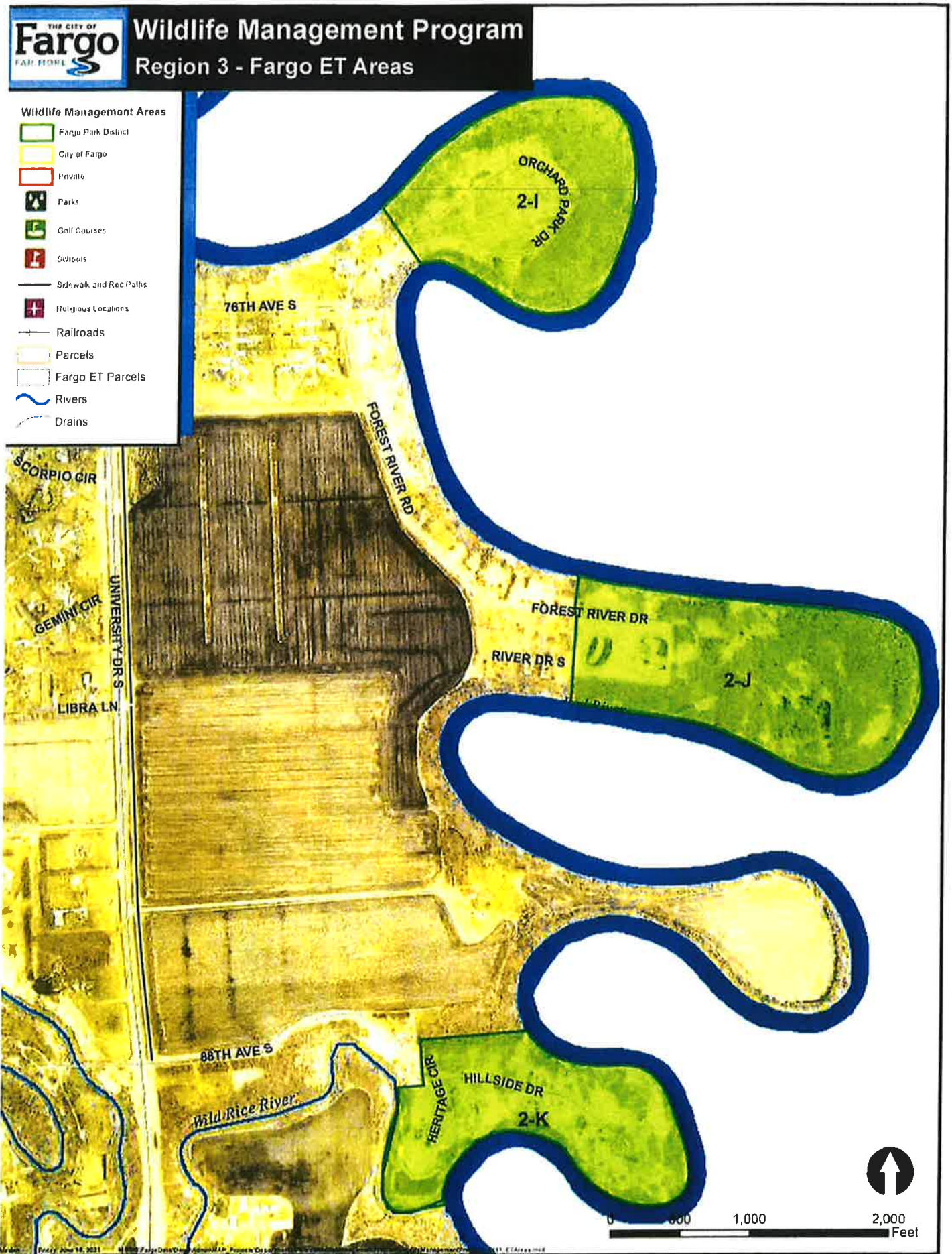
- Edge Park District
- City of Fargo
- Private
- Parks
- Hospitals
- Schools
- Subways and Roadways
- Railroads
- Parks
- Rivers
- Drains



0 500 1,000 2,000 Feet







CHAPTER 12 - CONTROL AND PROTECTION OF ANIMALS, BIRDS AND FOWL
ARTICLE 12-04 WILDLIFE MANAGEMENT PROGRAM-REGULATIONS

ARTICLE 12-04 WILDLIFE MANAGEMENT PROGRAM-REGULATIONS

12-0401. City Wildlife Management Program.

The board of city commissioners deems it necessary and appropriate to establish a Wildlife Management Program within the city limits of Fargo. Through this program, the city may authorize persons to use an archery device for purposes of meeting the goals of the program. The board of city commissioners shall have authority to adopt such rules and regulations as are necessary to implement the Wildlife Management Program.

Source: 4517 (2006), 4855 (2013).

12-0402. Definitions.

In this article, unless the context or subject matter otherwise requires:

1. "Archery device" shall mean any longbow or compound bow.
2. "Crossbow" shall mean a device for discharging quarrels, bolts, or arrows, formed of a bow set cross-wise on a stock, usually drawn by means of a mechanism and discharged by the release of a trigger.
3. "Projectile weapon" shall mean any bow, crossbow, pellet gun, slingshot or other weapon that is not a firearm, which is capable of expelling a projectile that could inflict serious physical injury or death by striking or piercing a person.
4. "Under the influence" shall mean that condition as defined by state regulation applied to motor vehicle operation.
5. "Tree stand" shall mean an elevated platform, a minimum of ten (10) feet above ground level, designed to support one hunter.

Source: 4517 (2006).

12-0403. Designated season and areas for inclusion within Wildlife Management Program, number of permits, permit fee.

The board of city commissioners may annually, by resolution, designate a period of time during which persons may participate in the city's Wildlife Management Program. The board of city commissioners may also, by resolution designate specific areas within the city limits for inclusion within the program as well as designate the appropriate number of permits. The board of city commissioners shall also have authority to charge a fee for participating in the program which may be set annually by resolution.

Source: 4517 (2006), 4855 (2013).

12-0404. Proficiency requirements for participants.

No person shall be allowed to participate in the Wildlife Management Program until he or she can present certification of having completed an archery safety course approved by the chief of police or his designee.

Source: 4517 (2006), 4855 (2013).

12-0405. Permission of landowner required.

- A. It shall be unlawful for any person carrying an archery device, or crossbow, of any type, to knowingly enter into the premises of another, or to discharge an archery device or crossbow of any type while on the premises or property of another without first having obtained written permission from the owner, lessee, or person in charge of such premises or property.
- B. When taking part in the activities authorized under this article, all participants must carry on their person, written documentation signed by the private property owner as confirmation that the participant has permission to be on that owner's private property.
- C. Any person granted permission to enter upon the property of another for purposes of this program shall be held responsible for their actions while on the person's property.

Source: 4517 (2006).

12-0406. Rules and regulations of participation.

- A. Eligibility for participation in the Wildlife Management Program is limited to persons eighteen years of age or older.
- B. Any person participating in the Wildlife Management Program shall:
 - 1. Pass an archery safety and program training course, to include a proficiency test;
 - 2. Apply for and obtain a city of Fargo permit to participate in the program and pay any related fee;
 - 3. Obtain a North Dakota Game and Fish Department special archery license and tag;
 - 4. Obtain written permission from the landowner prior to entering upon private property and carry proof of such written authorization;
 - 5. Permanently mark all arrows in his or her possession with the participant's last name and city of Fargo permit number;
 - 6. Comply with any rules and regulations governing the Wildlife Management Program;
 - 7. Comply with all other applicable archery rules and regulations issued by the North Dakota Game and Fish Department; and
 - 8. Follow all North Dakota Game and Fish Department guidelines regarding field dressing and processing of the animal.
- C. Nothing in this article shall authorize the parking or standing of vehicles on private property without the consent of the property owner or the parking or standing of any vehicles in violation of the Fargo Municipal Code.

Source: 4517 (2006), 4855 (2013).

12-0407. Specific actions prohibited.

- A. It shall be unlawful for any person to discharge any archery device or crossbow from across any street, sidewalk, road, highway, or playground.
- B. It shall be unlawful for any person to discharge an archery device or crossbow within one hundred (100) yards of any church, school, or playground.

- C. It shall be unlawful for any person to discharge any archery device or crossbow within fifty (50) yards of any dwelling, building, structure, or vehicle, unless the person has previously received express authority to discharge the archery device or crossbow within fifty (50) yards from the owner of the dwelling, building, structure, or vehicle.
- D. No arrow or other projectile authorized for use under this article may be discharged or projected at such an angle or distance as to land on public or private property other than the property on which the participant has permission to enter upon.
- E. No arrow or other projectile may be discharged or projected at such an angle or distance as to land within seventy-five (75) feet of any front-yard property line.
- F. No arrow or other projectile may be discharged or projected at such an angle or distance as to land within fifty (50) feet of any street or public-right of way.
- G. All hunting shall be conducted from an elevated position that is at least ten (10) feet in height and faces the interior of the property. The elevated position (wildlife stand) shall be located in such a way as to direct arrows away from occupied areas, buildings or dwellings, and to prevent any arrow from landing any closer than twenty-five (25) feet from any side or rear property line.
- H. No hunting is authorized on tracts of land under one (1) acre in area, except that adjacent property owners may combine their parcels to satisfy the property line discharge restrictions.
- I. No person shall possess, consume, or be under the influence of alcohol or any other controlled substance while participating in activities authorized under this article.
- J. Wildlife drives or efforts to direct or push wildlife to certain locations as part of assisting participants shall be prohibited.

Source: 4517 (2006), 4855 (2013).

12-0408. Wildlife retrieval.

- A. Participants shall make every reasonable effort to retrieve wildlife.
- B. Nothing in this article authorizes the act of trespass.
- C. It shall be the participant's responsibility to immediately notify any property owner, other than the specific property owner who has granted permission for hunting on his or her property, of the fact that an injured animal is located on his or her property.
- D. It shall be the participant's responsibility to obtain the permission of any property owner upon which an animal is located prior to engaging in a reasonable search and retrieval of the animal.
- E. In the event the participant cannot obtain the permission of a property owner to conduct a reasonable search and retrieval of an animal, the participant shall notify the North Dakota Game and Fish Department.

Source: 4517 (2006), 4855 (2013).

12-0409. Penalty for violations.

Any person, entity, or group of individuals who violate any provision of this article, other than the unlawful carrying, possession, or discharge of a weapon as described in section 10-0304, or who fail to follow any related rules or regulations, shall be charged with an infraction, punishable by a fine not to exceed \$500.00.

Source: 4517 (2006).

Brian Zastoupil

From: Brian Zastoupil <[REDACTED]>
Sent: Tuesday, May 3, 2022 3:09 PM
To: Brian Zastoupil
Subject: Fwd: Bowhunting/Deer Management

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

~~Sent from my iPhone~~

~~Begin forwarded message:~~

From: "Anderson, Casey R." <[REDACTED]>
Date: May 3, 2022 at 1:52:35 PM CDT
To: Brian Zastoupil <[REDACTED]>
Cc: Doug Leier <[REDACTED]>
Subject: RE: Bowhunting/Deer Management

Brian,

1. Is bowhunting an effective tool to manage deer populations in a suburban/urban environment?

Yes, it has been used to control deer numbers in Bismarck and state parks since 1991.

2. Is bowhunting a safe activity (for participants and public)?

Yes.

3. Why is a deer/wildlife management program needed in an urban environment (Such as Fargo/Red River Corridor)?

Peoples tolerance levels for how many deer should be around varies greatly. Responsibly managing any renewable wildlife resource for the benefit of people and the resource is most desired. Deer in these protected environments have a tendency to live longer. Deer will continue to seek these refuge areas with food sources and continue moving into the city limits. Also deer can cause extensive property

damage when not managed. Deer also can be a danger to motorists. On a national level, each year 120 to 200 people are killed in deer-vehicle collisions, more than any other species of wildlife.

4. What would be some of the consequences of not having a management program in an urban area? (And specifically the Fargo/Red River corridor)

Deer numbers will continue to increase, causing more deer-vehicle collisions, more complaints from property owners about damage to ornamental trees and gardens, and require more time for city official and police to deal with these issues.

5. As you have reviewed the existing Fargo Wildlife Mgmt program statistics, would you consider it an effective program to manage deer populations?

Yes, but this is not just a one and done effort. You will need to continuously keep pressure on the population as you will not be able to remove all deer and deer will continuously move into the city along the river. Looking at your survey information it seems the population has started to become stable to slightly declining. If the archery season was not in place the deer herd would be much larger.

From: Brian Zastoupil <[REDACTED]>
Sent: Monday, May 2, 2022 8:35 PM
To: Anderson, Casey R. <[REDACTED]>
Cc: Doug Leier <[REDACTED]>
Subject: Bowhunting/Deer Management

***** CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe. *****

Casey

I have a few questions to ask you as a biologist/wildlife management professional.

1. Is bowhunting an effective tool to manage deer populations in a suburban/urban environment?
2. Is bowhunting a safe activity (for participants and public)?
3. Why is a deer/wildlife management program needed in an urban environment (Such as Fargo/Red River Corridor)?
4. What would be some of the consequences of not having a management program in an urban area? (And specifically the Fargo/Red River corridor)
5. As you have reviewed the existing Fargo Wildlife Mgmt program statistics, would you consider it an effective program to manage deer populations?

Thanks in advance

Brian Zastoupil



To: City of Fargo Mayor & Commissioners
From: FMWF Chamber Board of Directors
Date: May 26, 2022
Re: Executive Summary - FMWF Chamber Ground Lease

Vision

The Fargo Moorhead West Fargo Chamber serves as a catalyst for growth and prosperity for businesses, individuals and the region as a whole. In order to respond to increasing demands and opportunities, The Chamber is seeking a new building space. After a formal RFP, the proposal to co-locate on the same property as the Fargo-Moorhead Convention and Visitors Bureau (CVB) best reflected the creative nature of the project and alignment with The Chamber priorities.

The intent in building a new facility is to create a forward-thinking, solution-based space to serve as a Business Resource Hub. This collaborative space would be a place for aligned-mission organizations to co-exist, providing a space dedicated to business growth and collaboration. Building a dedicated business resource one stop shop for growth and prosperity allows for aligned organizations to advance efficiencies, maximize resources and further generate success.

Benefits

The location of the build is of strategic importance. The land for proposed lease is currently owned by the City of Fargo but vastly underutilized. Adjacent to the CVB, the space is under lease with them, thus, a collaboration such as this Business Resource Hub would be reworking the space for a better use. Additionally, the 10,000 – 14,000 sq ft build would add a new tax base for the City of Fargo. Alongside these benefits, as a Business Resource Hub for growth and prosperity, is a community good and demonstrates visibility of partnership for the city.

For businesses, the location is highly visible and centralized with ease of access to parking and navigating. Additionally, the building would add programming space for up to 100, in addition to offices, conference rooms, collaboration spaces and a board room. These aspects were extremely important to The Chamber Board, which is why due diligence was done to overlay Chamber members and projected business growth with the community to identify best fit locations.

Timeline

After an affirmative vote from the commission to explore a land lease, multiple City of Fargo Department heads, along with Chamber President/CEO, Shannon Full, and Chamber Facility Committee Co-Chair Kevin Christianson met to discuss the potential land lease. After this



meeting, Nicole Crutchfield reported that they had no concerns at this time in regards to the development process. Everyone was supportive of the project with no reservations. Additionally, a ground lease, which was established by Assistant City Attorney Erik Johnson, city staff and the Chamber's facility's committee, was also discussed and agreed upon.

We are hopeful for commission approval at the May 31 Commission meeting, at which time we would begin to identify co-locating partners, start the process of an RFP for the architectural design and general contractor. The intent would be to break ground fall of 2022 on a 12 month build timeline.

Attachments

Attached is the proposed site plan denoting proposed lot split and access easements, the discussed land lease, and a letter of support from Charlie Johnson, President & CEO of the CVB.



June 22, 2021

Sandi Piatz, Chair
The Chamber of FMWF
202 First Avenue North
Moorhead, MN 56560

Dear Chair Piatz and Chamber Board Members:

Fargo-Moorhead CVB Board Chair Tom Kasper and I recently met with Shannon Full, Jim Parsons, Kevin Christianson and Kevin's co-worker, Blake Carlson, to discuss the possibility of finding space for the Chamber to build new headquarters on the FMCVB Visitor Center grounds. While the talks are preliminary, we all agreed that co-location of the Chamber on the CVB grounds was worth continued discussion.

Since the City Fargo owns the property and building housing the FMCVB I agreed to meet with Mayor Mahoney and City Administrator Bruce Grubb to find out if they had any early concerns. They did not but asked that we keep them posted as talks progressed. If we get to the point of having a detailed plan, we—and specifically The Chamber—will have to approach the City again to find out which departments have to be involved and what kind of property lease agreement the City would seek with the Chamber.

Mr. Kasper and I will bring the FMCVB Board up to date on these preliminary talks at our next meeting, Wednesday, June 30.

Sincerely,

A handwritten signature in black ink, appearing to read "Blake Carlson".

President & CEO

**Fargo-Moorhead
Convention & Visitors Bureau**

2001 44th St S
Fargo ND 58103

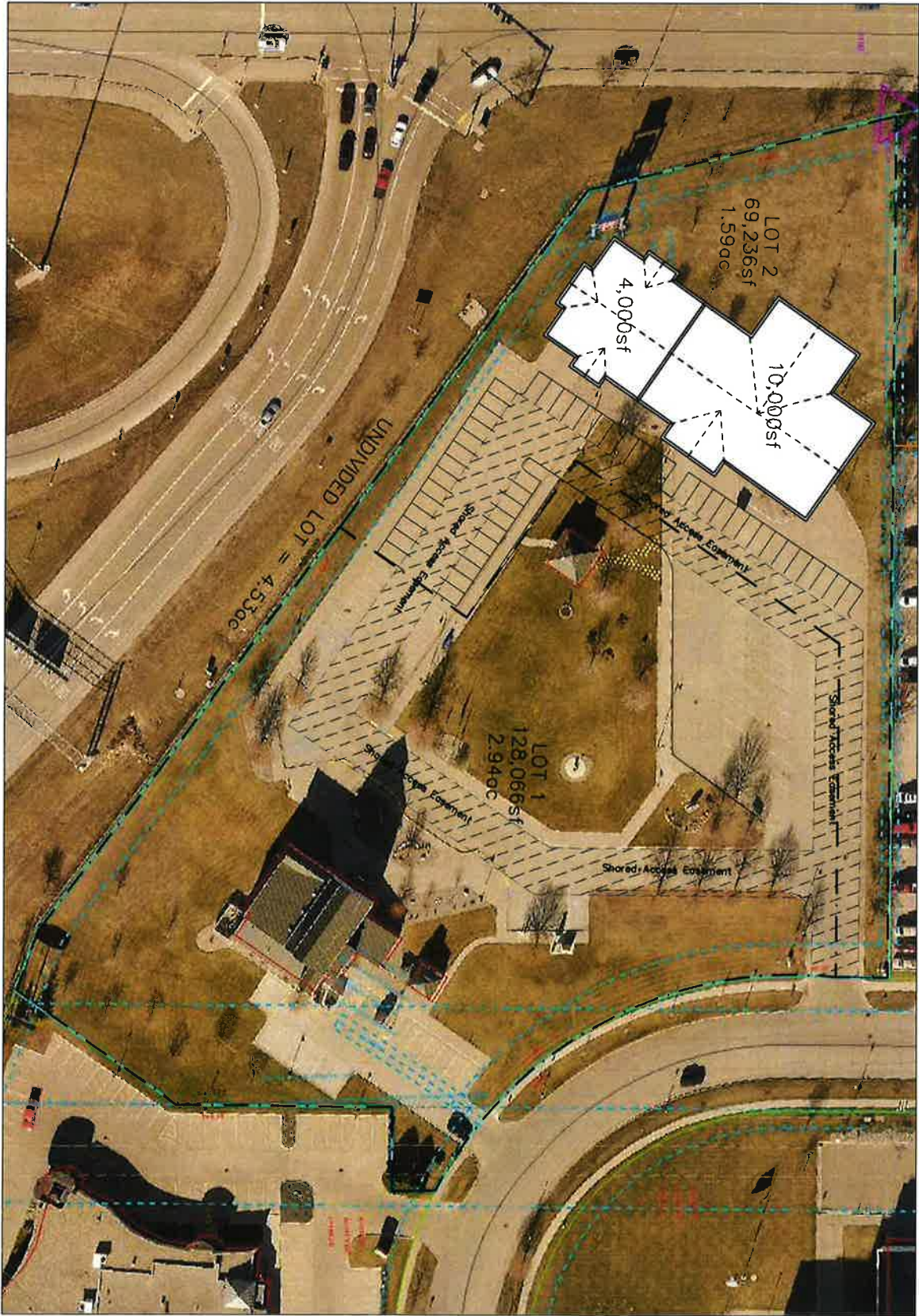
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Conceptual Site Plan

GROUND LEASE

THIS GROUND LEASE (this "**Lease**") is entered into by and between **City of Fargo** (the "**Landlord**"), and **The Chamber Fargo Moorhead West Fargo**, a North Dakota non-profit corporation (the "**Tenant**") as of the **Effective Date**, described below.

RECITALS:

A. Landlord is the owner of that certain tract of land (the "**Land**") with an address of 2001 44th Street South, Fargo, ND 58104 and containing approximately _____ acres. A legal description of the Land is attached hereto and incorporated herein by reference as **Exhibit A**.

B. Landlord desires to lease to Tenant a portion of the Land and improvements (the "**Premises**"), a description of which is attached hereto and incorporated herein by reference as Exhibit B, and Tenant desires to rent the Premises and said improvements from Landlord for the purpose of constructing a structure and related improvements for Tenant's use as an office building.

C. The parties recognize that the Fargo Moorhead Convention and Visitors Bureau, Inc., a North Dakota non-profit corporation, (the "**FM CVB**") occupies an eastern portion of the Land, a part of which includes the **Premises**, and it is the desire of the parties that an agreement be entered into with the FM CVB establishing the boundaries between the Premises (as defined herein) and the easterly remaining portion of the Land to be occupied by the FM CVB (the "**CVB Parcel**") and to set forth arrangements for shared use of the existing paved parking area lying and being on the Land (both the Premises and the CVB Parcel), and the use, maintenance, repair and replacement of said paved parking area as well as the approaches to said paved parking area lying within public right of way, said agreement referred to herein as the "**Shared Parking Agreement**".

NOW, THEREFORE, Landlord and Tenant hereby agree as follows:

ARTICLE 1

Lease of Premises

1.1 **Land Leased.** Landlord, in consideration of the rents, covenants, agreements and conditions herein set forth, hereby leases to Tenant, and Tenant hereby rents and leases from Landlord, the Premises, consisting of the Land, together with all of Landlord's rights, interests, estates and appurtenances thereto, all improvements now or hereafter thereon.

1.2 **Premises**. The Premises includes the rights, interests, estates, and appurtenances leased to Tenant pursuant to Section 1.1, together with all improvements now or hereafter constructed thereon

1.3 **Habendum**. TO HAVE AND TO HOLD the Premises, together with all and singular the rights, privileges and appurtenances thereunto attaching or in anywise belonging, exclusively unto Tenant, its successors, and assigns, for the term set forth in Article 2, subject to termination as herein provided, and subject to and upon the covenants, agreements, terms, provisions and limitations herein set forth.

ARTICLE 2

Term of the Lease

2.1 **Initial Term**. The initial term of this Lease, being the period of time commencing on the Effective Date and shall end at midnight local time on the date which is the last day of the Twentieth (20th) Lease Year, is hereinafter referred to as the "**Initial Term**", subject to earlier termination as set forth in Section 2.4.

2.2 **Renewal Terms**. Tenant shall have the right to renew this Lease for three (3) periods of ten (10) years, each referred to herein as a "**Renewal Term**", upon the same terms and conditions as the Initial Term except that the Base Rent will be adjusted as shown in Section 3.3 below. Tenant shall initiate the procedure for the Renewal Term by delivering written notice to Landlord on or before the date which is six (6) months prior to the end of the Initial Term or of a Renewal Term, as applicable. In the event Tenant does not notify Landlord of its intention to renew within the time specified, Tenant's right to renew shall terminate, and this Lease shall expire as of the end of the Initial Term or the applicable Renewal Term, as the case may be. The Initial Term and any Renewal Terms, if exercised, are referred to herein collectively as the "**Term**". Tenant shall have the right to renew this Lease for a second Renewal Term only if Tenant has exercised the right to renew this Lease for the first Renewal Term and Tenant shall have the right to renew this Lease for a third Renewal Term only if Tenant has exercised the right to renew this Lease for the second Renewal Term.

2.3 **Renewal by Mutual Agreement**. This Lease may be renewed on or after the Initial Term or the Renewal Term by mutual agreement of the parties upon such terms and for such period as may be mutually agreed in writing.

2.4 **Failure to Initiate Construction--Early Termination**. Notwithstanding any other provision of this Lease, in the event that Tenant has not commenced construction of the office building on the Land on or before the 31st day of December, 2023, then in such event, this Lease shall automatically terminate.

ARTICLE 3

Rent

3.1 **Rent Commencement Date and Lease Year.** "Rent Commencement Date" shall mean the earlier of (a) the first day of the month following the date an occupancy permit is issued for the building to be constructed on the Land and (b) the date that is twelve (12) months after the Effective Date. "Lease Year" shall mean each consecutive period of twelve (12) full calendar months, following the Rent Commencement Date, provided, however, that if the Rent Commencement Date is a date other than the first day of a calendar month, the first Lease Year shall include that fractional portion of the calendar month in which the Rent Commencement Date occurs and the first full twelve (12) months thereafter, and the last Lease Year shall end on the expiration or earlier termination of this Lease. Once the Rent Commencement Date has been established, the parties shall execute a letter (the "**Rent Commencement Date Letter**"), in the form attached hereto as **Exhibit C**, memorializing the Rent Commencement Date and the last day of the Initial Term. The failure of one or both parties to execute a Rent Commencement Letter shall not invalidate any provision of this Lease and the parties will use other evidence to determine the Rent Commencement Date.

3.2 **Base Rent.** Tenant shall pay rent ("**Base Rent**") to Landlord in the monthly amount of One Thousand and no/100 Dollars (\$1,000.00) per month.

- (a) **Base Rent Adjustment.** Base Rent shall be increased by twenty percent (20%) beginning with the first of the month following the tenth (10th) Lease Year, and Base Rent shall thereafter be increased by twenty percent (20%) every ten years thereafter.

3.3 **Additional Rent.** The term "**Additional Rent**" shall mean all amounts required to be paid by Tenant to Landlord under the terms of this Lease other than Base Rent, including Taxes (as defined in Section 4.1). The term "**Rent**" shall mean Base Rent and Additional Rent.

3.4 **Payment of Rent.** Base Rent shall be paid to Landlord by Tenant in monthly installments in advance on the first day of each calendar month in lawful money of the United States of America without notice or demand. If the Rent Commencement Date or termination date of this Lease is other than the first day of a month, Tenant shall pay a proportionate share of the monthly installment of Base Rent for any partial month.

3.5 **Late Charges.** If any installment of Rent or any other sum due from Tenant shall not be received by Landlord within five (5) days after said amount is due, then Tenant shall pay to Landlord a late charge equal to five percent (5%) of the overdue amount plus any attorneys' fees incurred by Landlord by reason of Tenant's failure to pay Rent and/or other charges when due hereunder. The late charge shall be deemed

Additional Rent and the right to require it shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner. In addition to the late charge described above, any Rent or other amounts owing hereunder which are not paid within thirty (30) days after the date they are due shall bear interest from the date when due until paid at the rate of ten percent (10%) per annum.

3.5 **No Abatement.** Except as otherwise expressly provided in this Lease, no happening, event, occurrence, or situation during the Term, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations hereunder to pay Rent, or entitle Tenant to an abatement of Rent.

3.6 **Security Deposit.** Tenant shall not be required to pay Landlord a security deposit.

ARTICLE 4

Taxes, Utilities

4.1 **Taxes.** The term "Taxes" shall mean all real estate taxes, assessments, use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excises, levies, license and permit fees and other charges by any public authority, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which shall or may during the Initial Term and any applicable Renewal Term, be assessed, levied, charged, confirmed or imposed by any public authority upon, or accrue, or become a lien on (i) the Premises or any part thereof; and (ii) the buildings or improvements now or hereafter constructed on the Premises. Taxes shall not include any personal property tax, income tax, capital levy, estate, succession, inheritance or transfer taxes or similar tax of Landlord; any increase in taxes resulting from a sale of the Premises or any portion thereof (or any interest therein); any franchise tax imposed upon any owner of the fee of the Premises; or any income, profits or revenue tax, assessment or charge imposed upon the rent or other benefit received by Landlord under this Lease by any association having jurisdiction over the Land, any municipality, county, state, the United States of America or any other governmental body, subdivision, agency or authority having jurisdiction over the Premises (hereinafter all of the foregoing bodies are collectively referred to as "**Governmental Authorities**").

4.2 **Tenant's Tax Obligations.** Commencing on the Effective Date and continuing throughout the remainder of the Term, Tenant shall pay directly to the applicable Governmental Authority all Taxes (to the extent attributable to the Term) as and when the same become due and payable. Taxes that are payable by Tenant for the tax year in which the Effective Date occurs, as well as during the year in which the Term ends, shall be apportioned as of the Effective Date so that Tenant shall pay its proportionate share of the Taxes payable by Tenant for such periods of time. Tenant shall pay to Landlord, within thirty (30) days following Landlord's written demand therefor, Tenant's proportionate share of all Taxes payable by Tenant for the tax year in which the Term ends. Where any Taxes that Tenant is obligated to pay may be paid pursuant to

law in installments, Tenant may pay such Taxes in installments as and when such installments become due over the longest period permitted by the applicable Governmental Authority. Tenant shall, within thirty (30) days of Landlord's written request, deliver to Landlord evidence of payment of all Taxes which Tenant is obligated to pay hereunder.

4.3 **Tax Contest.** Tenant may, at its sole cost and expense, contest the validity or amount of any Taxes for which Tenant is required to pay pursuant to Section 4.2 above.

4.4 **Landlord's Utilities Obligations.** Landlord shall reasonably cooperate with Tenant in establishing utility connections for the Premises at locations requested by Tenant, including, without limitation, all utility lines, water, fire hydrants, gas, storm and sanitary sewer, electricity, telephone, and other communication services, all as required by Tenant for Tenant's intended use of the Premises. Such cooperation shall include, without limitation, execution, acknowledgement and delivery of any applications easements and other documents requested by Tenant within three (3) business days following Tenant's written request therefore.

(a) **Tenant's Utilities Obligations.** Subject to Landlord's cooperation obligations set forth in Section 4.4, Tenant shall be responsible, at its sole cost and expense, for obtaining, connecting, installing, repairing and maintaining all utility lines, connections and facilities on the Premises and shall pay all charges for gas, electricity, telephone and other communication services and all other utilities and similar services rendered or supplied to the Premises following the Rent Commencement Date and throughout the duration of the Term, and all water rents, sewer service charges or other similar charges levied or charged against, or in connection with, the Premises during such time.

(b) **Service Suspension:** Landlord shall have no right to suspend Tenant's utility services for any reason. If, due to any act or omission by Landlord, its agents, employees or contractors, any utility or other service to the Premises is interrupted for forty-eight (48) consecutive hours or more and, as a result thereof, Tenant is unable to continue its normal business operations in the Premises, all Rent and other charges payable hereunder shall be equitably reduced for the period during which such interruption exists, taking into account all of the relevant facts and circumstances. In the event of any such interruption of any utility or other service to the Premises, Landlord shall use reasonable diligence to restore such service as soon as practicable.

ARTICLE 5

Tenant's Right of First Refusal.

5.1 **Option/Right of First Refusal.** Before selling the Land to anyone else other than Tenant, Landlord shall first offer the Land for sale to Tenant for the same terms as have been offered. This option/right of first refusal shall be exercised as follows:

- (a) Before conveying or granting the Land to anyone other than Tenant, Landlord shall deliver to Tenant notice of Landlord's receipt from a prospective buyer of a bona fide offer to purchase the Land. Hereinafter, said notice shall be referred to as the "Notice." The Notice shall contain the terms being offered.
 - (b) The Notice shall be delivered to Tenant by certified mail, return receipt requested and shall be deemed delivered when received by Tenant, as evidenced by the return receipt.
 - (c) The Notice shall constitute an offer by Landlord to sell to Tenant the Land for the same terms as indicated in the Notice.
 - (d) Tenant shall have ten (10) days to accept or reject the offer from date of receipt of the Notice. Tenant's failure to accept or reject the offer within the ten (10) days, shall be considered a forfeiture of the right to purchase the property and shall be considered a rejection of said offer.
- 5.2 **Terms of sale and closing.** Upon the exercise of this option by Tenant, the closing shall occur within 75 days of the Notice unless such time shall be extended by the mutual consent of the parties or to allow title defects to be cured as provided herein. At the closing, Landlord shall deliver to Tenant a quitclaim deed free and clear of all encumbrances except this Lease, easements of record, restrictive covenants, and mineral grants and reservations of record, if any, and building and zoning laws, ordinances and state and federal regulations and Tenant shall pay to Landlord the balance of the purchase price after receiving all due credits for pro-rated taxes and special assessments and any other credit due to Tenant.
- 5.3 **Examination of abstract.** Landlord shall arrange for delivery of an updated abstract of title to Tenant and Tenant shall have the abstract of title examined prior to closing. If title to the property is unmarketable, Landlord shall have a period of 180 days to correct the title and make it marketable.
- 5.4 **Closing costs.** It is specifically acknowledged and agreed that Landlord shall pay the following costs and no others connected with the closing of this transaction should this Option/Right of First Refusal be exercised:
- (a) The abstract continuation cost for the initial title examination;
 - (b) The preparation of the quitclaim deed; and,
 - (c) The recordation of any instruments required to clear title including, but not limited to, satisfactions of all prior liens and encumbrances and any of Landlord's real estate commissions to be paid upon the purchase price of the property.
- 5.5 **Taxes and special assessments.** Real estate taxes and installments for special assessments for the year prior to the year of closing and all prior years, as well as for the year in which the closing occurs (payable in the following year) shall be paid as provided in this Lease. Tenant shall pay the real estate taxes and installments for special assessments for the year subsequent to the year of closing.
- 5.6 **Possession.** The Tenant, presumably being already in possession as a result of the Lease need not take possession thereof; however, to the extent

there is any question, possession shall be delivered to Tenant on the date of closing.

- 5.7 **Time of the essence.** Tenant acknowledges and agrees that time shall be strictly of the essence in the performance of Tenant's obligations under this agreement. The failure of Tenant to exercise its rights in the time and manner specified by this agreement shall release Landlord from any further obligation under this Article 5.
- 5.8 **Term of agreement.** This option and right of first refusal shall terminate at the end of this Lease.
- 5.9 **Nonassignability.** This option/right of first refusal is personal and specific to Tenant, and may not be assigned by Tenant to any other entity; provided, however, that as to the Land, the obligation of this option agreement shall run with the land and be binding upon Landlord's heirs, assigns and successors in interest.
- 5.10 **Execution of documents.** Upon termination of this option/right of first refusal, according to the terms hereof, Tenant agrees to execute a release of option/right of first refusal upon request by Landlord in a form that is acceptable for recording with the recorder's office, Cass County, North Dakota.

ARTICLE 6

Landlord's Warranties and Covenants

6.1 **Warranties and Covenants.** Landlord warrants and represents to Tenant that Landlord has full right, power, and authority to enter into this Lease and own good and indefeasible fee simple title to the Premises. [[City comment: City will need to undertake some preliminary title investigation to become comfortable with any title representation and warranty.]]

6.2 **Dedications and Easements.** Tenant shall have the right to review and reasonably approve any and all existing and future documents regarding declarations, development, easements, covenants, and restrictions in any way affecting the Premises, or any portion thereof.

ARTICLE 7

Construction

7.1 **Construction of New Improvements.** On and after the Effective Date and subject to early termination of this Lease as set forth in Section 2.4 relating to failure of the Tenant to commence construction, Tenant shall have the right, but not the obligation, from time to time and at any time, at its sole cost and risk, subject to the subsequent provisions of this Section, to construct, new improvements thereon. Any improvements constructed by Tenant on the Land shall be constructed in accordance with the Construction Standards (as defined in Section 7.3). "Improvements" shall mean any

buildings, structures, signage, or other improvements located upon the Land at any time during the Term.

7.2 **Alterations**. At any time and from time to time during the Term, Tenant may perform such alteration, renovation, repair, refurbishment, and other work with regard to any Improvements as Tenant may elect ("**Alterations**"), provided that the same are done in accordance with the Construction Standards as set forth in Section 7.3 below. To the extent Landlord's cooperation is required for Tenant to obtain any permits and/or approvals for any Improvements (including the initial Improvements) and/or Alterations, Landlord shall cooperate with and assist Tenant in obtaining such permits and approvals, as necessary, provided such cooperation and assistance shall be at no out-of-pocket cost to Landlord. [[City comment: Form of lease not designed for situation in which the Landlord happens to be the governmental entity that issues building permits.]]

7.3 **Construction Standards and Liens**.

(a) **Standards**. Improvements and Alterations shall be performed, in accordance with the following standards ("**Construction Standards**"):

(i) Construction of Improvements or Alterations shall be performed in a good and workmanlike manner in accordance with good industry practice for the type of work in question.

(ii) Construction of Improvements or Alterations shall be done in compliance with all applicable deed restrictions, building codes, ordinances and other laws or regulations of Governmental Authorities.

(iii) Tenant shall not commence construction of any Improvements or Alterations until all licenses, permits and authorizations required for such Improvements or Alterations by all Governmental Authorities having jurisdiction have been obtained.

(iv) Tenant shall have obtained and shall maintain in force and effect the insurance coverage required in Article 9 with respect to any Improvements or Alterations.

(v) After commencement, construction of Improvements or Alterations shall be prosecuted with due diligence to completion.

(vi) Nothing herein shall relieve Tenant from the obligation to comply with all applicable federal, state and local laws including building and related code requirements.

(b) **Mechanic's and Materialmen's Liens**. Tenant shall have no right, authority, or power to bind Landlord or any interest of Landlord in the Premises for any claim for labor or for material or for any other charge or expense incurred in constructing any Improvements or performing any Alterations with regard thereto, nor to render Landlord's interest in the Premises liable for any lien or right of lien for any labor, materials

or other charge or expense incurred in connection therewith. Tenant shall not be considered the agent of Landlord in the construction, erection or operation of any Improvements or Alterations. If any liens or claims for labor or materials supplied or claimed to have been supplied to the Premises are filed, Tenant shall diligently pursue the release or discharge thereof, or may contest the same in good faith; provided however, if such lien remains for a period in excess of sixty (60) days, Tenant shall bond over such lien.

7.4 **Tenant's Equipment**. The term "**Tenant's Equipment**" means personal property, including furnishings, furniture, equipment, sign faces used in connection with Tenant's operations at the Premises, but shall exclude fixtures, kitchen equipment, security/access equipment and systems, and audio/visual equipment and systems.

7.5 **Ownership and Removal of Tenant's Equipment**. Tenant's Equipment shall be solely the property of Tenant. Within ten business (10) days following the expiration or termination of the Term, Tenant shall have the right, but not the obligation, to remove all Tenant's Equipment from the Premises; provided, however, that Tenant shall repair any damage caused by such removal. If Tenant fails to remove all Tenant's Equipment within such ten (10) day period, all of Tenant's Equipment remaining on the Premises shall become the property of Landlord without any credit or compensation to Tenant.

7.6 **Ownership of Improvements**. During the Term, all Improvements shall be solely the property of Tenant. Upon expiration or termination of the Term, the then-existing Improvements shall be the property of Landlord.

ARTICLE 8

Use, Maintenance and Repairs

8.1 **Use**. Subject to the terms and provisions hereof, Tenant shall have the right to use and enjoy the Premises for use as an office building. Tenant shall not use or occupy, knowingly permit the Premises to be used or occupied, nor do or knowingly permit anything to be done in or on the Premises in a manner which would (i) in any way make void or voidable any insurance then in force with respect thereto, (ii) make it impossible to obtain the insurance required to be furnished by Tenant hereunder (iv) constitute a public or private nuisance, or (v) violate any deed restrictions affecting the Land (other than restrictions which would prohibit or restrict use of the Land for the operation of a financial institution), or any present or future, ordinary or extraordinary, foreseen or unforeseen, laws, regulations, ordinances or requirements of any Governmental Authority. In no event shall Tenant have any obligation to open or operate at the Premises.

Landlord, to its actual knowledge, represents and warrants to Tenant that, (i) Tenant's proposed use of the Premises as set forth in this Section 8.1 is not prohibited by and does not and shall not violate any exclusive use, prohibited use or other agreement

binding Landlord and/or the Premises, (ii) there is no litigation or threatened litigation that would affect Tenant's proposed construction of the Improvements contemplated by Tenant for such use, (iii) there are no restrictions on utilities, that could adversely affect construction of Tenant's contemplated Improvements or Tenant's intended use of the Premises, (iv) there are no moratoria or other restrictions that would adversely affect the design, permitting, and construction of Tenant's Improvements, and (v) no third party or Governmental Authority other than the City of Fargo, State of North Dakota, has approval rights over Tenant's use, elevations or signage, or other improvements to be constructed by Tenant at the Premises.

8.2 **Maintenance and Repairs.** Tenant shall maintain and repair the Premises, including, without limitation, the interior and exterior, structural and nonstructural located within the Premises throughout the Term and any Renewal Term. Maintenance, replacement and repair of the parking areas, sidewalks and curbs the Premises, including but not limited to snow removal, lawn care, parking lot striping, lighting and replacement costs of these improvements, shall be in accordance with the terms of the Shared Parking Agreement referenced in Article 1.

ARTICLE 9

Insurance and Indemnity

9.1 **Tenant's Insurance.**

(a) From and after the Effective Date and throughout the Term, Tenant shall maintain (i) commercial general liability insurance, with limits of not less than \$2,000,000.00 per occurrence for bodily injury, personal injury, death, and property damage with respect to the Premises, naming Landlord as a named insured and any mortgagee of Landlord as additional insureds, and (ii) "Basic Form" property damage insurance, including plate glass and builder's risk insurance during any period of construction, covering Tenant's personal property and all Tenant Improvements and Alterations at and to the Premises on a full replacement cost basis. Tenant shall provide Landlord a certificate evidencing proof of the foregoing insurance on or before the Effective Date and annually thereafter, and, at Landlord's request, provide Landlord access to copies of such insurance policies.

(b) During the Term of this Lease while Tenant's Improvements and Alterations are being constructed, Tenant shall maintain or cause to be maintained worker's compensation insurance, disability and other similar insurance for all persons employed by Tenant or its contractors in connection with Tenant's Improvements and Alterations in at least minimum amounts required by statute.

(c) Property insurance insuring the Premises and any trade fixtures or personal property located on the Land (the "Insured Property") against loss or damage by fire and other hazards and contingencies insurable under an "all risk" form of policy in an amount not less than the actual replacement cost of the Insured Property (exclusive of

foundations and excavations). The policy must include an endorsement removing any exclusion for losses occasioned by the enforcement of any ordinance or law regulating the construction, repair, demolition or condemnation of any building or structure. During the construction of the Improvements, Tenant must maintain property insurance pursuant to a "builders risk completed value" form of policy.

9.2 **Waiver of Subrogation.** Landlord and Tenant agree that all policies of insurance to be kept and maintained in force by the respective parties hereto, shall, unless prohibited by law or other regulation having the effect of law, contain provisions in which the rights of subrogation against the Landlord and Tenant are waived by the insurance company or carriers insuring the Premises or any of the Improvements thereon. Landlord expressly waives any right of recovery against Tenant for damage to or loss of the building or other improvements on the Premises, which loss or damage may arise by fire or any other peril covered by any policy of insurance required to be maintained pursuant to this Lease which contains or is required to contain waiver of subrogation rights against Tenant pursuant to this Section, and Landlord shall make no claim for recovery against Tenant therefor. Tenant expressly waives any right of recovery against Landlord for damage to or loss of its fixtures, improvements, or other property located at the Premises, which damage or loss may arise by fire or any other peril covered by any policy of insurance maintained or required to be maintained pursuant to this Lease which contains or is required to contain a waiver of subrogation right against Landlord as set forth in this Section, and Tenant shall make no claim for recovery against Landlord therefor, except if such casualty or damage was caused by Landlord or any affiliate, employee, contractor, or agent of Landlord.

9.3 **Tenant's Indemnity**

(a) Tenant agrees to indemnify, defend, and hold Landlord harmless from and against any and all direct claims asserted by third parties as the result of or arising out of: (i) Tenant's negligent use or occupancy of the Premises; or (ii) the carelessness, negligence, or improper conduct of Tenant or any of its agents, contractors, employees, or licensees.

(b) Tenant further agrees to indemnify, defend and hold Landlord harmless from and against all direct and actual costs, damages, expenses, losses, fines, liabilities and reasonable counsel fees paid, suffered or incurred as a result of any of the above described claims or any actions or proceedings brought thereon; and in the event any action or proceeding is brought against Landlord by reason of any such claim, upon notice from Landlord, Tenant agrees to resist or defend at Tenant's expense such action or proceeding by counsel reasonably satisfactory to Landlord.

(c) Tenant's liability under this Article 9 and this Lease extends to the acts and omissions of any subtenant of Tenant, or any agent, contractor, employee, or licensee of any such subtenant.

9.4 **Landlord's Indemnity.**

(a) Landlord agrees to indemnify, defend, and hold Tenant harmless from and against any and all claims asserted by third parties as the result of or arising out of (i) the negligence or improper conduct of Landlord or any of its agents, contractors, employees or licensees on or about the Premises; and (ii) any conditions existing at the Premises as of the Delivery Date, including without limitation, the presence of Hazardous Materials (unless such Hazardous Materials were brought onto the Premises by Tenant).

(b) Landlord further agrees to indemnify, defend and save Tenant harmless from and against all direct and actual costs, damages, expenses, losses, fines, liabilities and reasonable counsel fees paid, suffered or incurred as a result of any of the above described claims or any actions or proceedings brought thereon; and in case any action or proceeding is brought against Tenant by reason of any such claim, upon notice from Tenant, Landlord agrees to resist or defend at Landlord's expense such action or proceeding by counsel reasonably satisfactory to Tenant.

(c) Landlord's liability under this Article 9 and this Lease extends to the acts and omissions of any successor of Landlord, or any agent, contractor, employee, or licensee of any such successor.

ARTICLE 10

Casualty Loss

10.1 Tenant's Rights. Should any Improvements be wholly or partially destroyed or damaged by fire or any other casualty insured by Tenant's Basic Form insurance policy, then Tenant shall have the right, at Tenant's sole election, to either (a) restore and reconstruct the Improvements in compliance with the Construction Standards, or (ii) terminate this Lease. If Tenant elects to terminate this Lease pursuant to this Section 10.1 at any time prior to the last five (5) Lease Years of the then-current Term, Tenant shall (i) at the request of Landlord, cause the Improvements to be razed and the Land to be leveled, cleaned and otherwise put in good order and (ii) pay to Landlord the value of the Base Rent for the remainder of the Term, excluding any remaining Renewal Terms, discounted at a rate equal to Tenant's Base Rate (hereinafter defined) at the time of the payment. Thereafter, the parties shall have no further rights, duties, or obligations under this Lease. If Tenant elects to terminate this Lease under this Section at any time during the last five (5) Lease Years of the then-current Term, Tenant shall, at the request of Landlord, cause the Improvements to be razed and the Land to be leveled, cleaned, and otherwise put in good order. Thereafter, the parties shall have no further rights, duties, or obligations under this Lease. If Tenant elects not to terminate this Lease under this Section, Tenant shall promptly repair, replace, restore, and reconstruct any Improvements, all in compliance with the Construction Standards. For purposes of this Section, "Base Rate" means the Wall Street Journal Prime Rate, its successors, as its Base Rate of interest (which may not be the lowest, best, or most favorable rate of interest).

In the event that the Improvements are wholly or partially destroyed by a casualty damage not insured by Tenant's Basic Form insurance policy, then Tenant shall have the

right, at Tenant's election, to either (X) restore and reconstruct the Improvements, as provided above, or (Y) terminate this Lease upon written notice to Landlord (and Tenant shall not be required to reimburse Landlord for the value of Base Rent as described in subsection (ii) above) and cause the Improvements to be razed and the land leveled, cleaned, and otherwise put in good order, and the parties shall have no further obligations to each other, except for those that specifically survive the termination of this Lease.

10.2 **Notice of Damage.** Tenant shall promptly notify Landlord of any destruction or damage to the Premises.

ARTICLE 11

Condemnation

11.1 **Total Taking.** Should the entire Premises be taken (which term, as used in this Article, shall include any conveyance in avoidance or settlement of eminent domain, condemnation, or other similar proceedings) by any Governmental Authority, corporation or other entity under the right of eminent domain, condemnation or similar right, then Tenant's right of possession under this Lease shall terminate as of the date of taking possession by the condemning authority, and the award therefor will be distributed as follows: (i) first, to the payment of all reasonable fees and expenses incurred in collecting the award, (ii) second, to Tenant in an amount equal to the unamortized cost of the Improvements (assuming that the Improvements are amortized over the Initial Term of the Lease), plus Tenant's moving and relocation expenses and (iii) the balance of the award shall be equitably apportioned between Landlord and Tenant based on the then respective fair market values of Landlord's interest in the Premises (appraised by reference to all relevant factors including the income stream derivable by Landlord under this Lease and the then present value of Landlord's reversionary interest in the entire Premises after expiration of the Initial Term or the then-current Renewal Term) and Tenant's interest in the Premises (appraised by reference to all relevant factors, including the income stream derivable by Tenant from the Premises for the remainder of the Initial Term or the then-current Renewal term). If Landlord and Tenant are unable to agree on the respective fair market values of their interest in the Premises, then, at the request of either party, the matter will be resolved by binding arbitration before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. After the determination and distribution of the condemnation award as herein provided, the Lease shall terminate, and the parties shall have no further rights, duties, or obligations under the Lease.

11.2 **Partial Taking.** Should a portion of the Premises be taken by any Governmental Authority, corporation, or other entity under the right of eminent domain, condemnation or similar right, such that (i) in Tenant's reasonable judgment, the portion of the Improvements to be taken shall make it economically impractical to use the remainder for the uses and purposes contemplated in this Lease, or (ii) the portion of the Premises or Improvements taken render Tenant's available parking spaces to be less than those required by any Governmental Authority or otherwise unsatisfactory for

Tenant's business operations at the Premises, or (iii) any access deemed reasonably necessary by Tenant is taken, then this Lease shall, at the option of Tenant (exercisable by written notice to Landlord) terminate as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Premises had thus been taken, and the award therefor shall be distributed as provided in Section 11.1. Should any other partial taking of the Premises occur, then this Lease shall continue in effect as to the Premises, or the remainder thereof, as the case may be. In the event of a partial taking where this Lease is not terminated, the Base Rent payable during the remainder of the Term after taking of possession by the condemning authority shall be reduced on a just and proportionate basis having due regard to the relative value and square footage of the portion of the Premises taken as compared to the remainder thereof, and taking into consideration the extent, if any, to which Tenant's use of the remainder of the Premises shall have been impaired or interfered with by reason of such partial taking. If Landlord and Tenant are unable to agree as to a just reduction in Base Rent, then, at the request of either party, the matter will be resolved by binding arbitration before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

11.3 **Award on Partial Taking.** In the event of a partial taking where this Lease is not terminated, and as a result thereof Tenant will need to restore, repair, or refurbish the remainder of the Premises to make such remaining Premises suitable for Tenant's business operations at the Premises, then (i) the award shall first be paid to Tenant for payment of such restoration, repair, and refurbishment in accordance with the Construction Standards and (ii) the remainder shall be apportioned and paid as provided in (i) and (iii) of Section 11.1, considering the respective interests of Landlord and Tenant in the portion of the Premises taken. If a portion of the Premises is taken, and, in Tenant's reasonable business judgment, no repair or restoration work is required, then the award therefor shall be apportioned and paid as provided in (i) and (iii) of Section 11.1, considering the respective interests of Landlord and Tenant in the portion of the Premises taken.

11.4 **Temporary Taking.** If the whole or any portion of the Premises is taken for temporary use or occupancy, the Term shall not be reduced or affected, and Tenant shall continue to pay Rent in full. Except to the extent Tenant is prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall continue to perform and observe all of the other covenants, agreements, terms, and provisions of this Lease. In the event of any temporary taking, Tenant shall be entitled to receive the entire amount of any award therefor unless the period of temporary use or occupancy shall extend beyond the expiration of the Term, in which case, such award, after payment to Landlord therefrom for the estimated cost of restoration of the Premises to the extent that any such award is intended to compensate for damage to the Premises, shall be apportioned between Landlord and Tenant as of the day of expiration of the Term in the same ratio that the part of the entire period for such compensation is made falling before the day of expiration and that part falling after, bear to such entire period.

11.5 **Notice of Taking, Cooperation.** Landlord and Tenant shall immediately notify the other of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to the Premises. Landlord and Tenant covenant and agree to fully cooperate in any condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof. Any termination of this Lease pursuant to this Article 11 shall not affect the rights of Landlord and Tenant to any such award.

ARTICLE 12

Tenant Transfers, Encumbrances, Assignment and Subletting

12.1 **Tenant's Right to Assign; Permitted Occupants.** Tenant may not assign its rights hereunder to any other party without Landlord's prior written consent, which consent may be withheld, conditioned or delayed in Landlord's sole discretion.

12.2 **Tenant's Right to Sublease.**

(a) Tenant may not, without the prior consent of Landlord, sublease the Premises or any portion thereof without the Landlord's prior written consent, which consent may be withheld, conditioned or delayed in Landlord's sole discretion, which consent will not be unreasonably withheld.

(b) Any approved sublease of the Premises or any portion thereof shall specifically provide that the sublessee's rights under such sublease are subject to Landlord's rights under this Lease, and shall provide that upon a termination of this Lease or of Tenant's right to possession of the Premises, such sublease shall continue in effect as a direct lease between Landlord and the sublessee, provided that (i) the sublessee attorns to Landlord, (ii) Landlord shall not be responsible for the return or repayment of any security or other deposits made by such sublessee with Tenant unless Tenant has turned the same over to Landlord, and (iii) Landlord shall not be liable or responsible for the cure or remedy of any breach, violation or default on the part of Tenant under any such sublease to the extent the same occurred prior to termination of this Lease or of Tenant's right to possession of the Premises. Tenant shall give a copy of each sublease to Landlord upon written request therefor by Landlord from time to time.

(c) If for any reason this Lease or Tenant's right to possession of the Premises is terminated by Landlord in accordance with the terms of this Lease, such termination shall not result in the termination of any subleases affecting the Premises that have been entered into in accordance with the foregoing provisions. Landlord shall recognize each such sublease and any sublease shall continue for the duration of its term (including applicable renewals and extensions) as a direct lease between Landlord and the sublessees. From time to time, upon request therefor, Landlord shall enter into recognition and attornment agreements with sublessees further evidencing Landlord's agreement to recognize subleases as provided in this Section.

(d) As used in this Lease the term "**sublease**" shall include any leases, licenses, occupancy agreements, franchise or other similar rights, agreements or arrangements of whatever nature relating to the use or occupancy of all or any portion of the Premises.

12.3 **Mortgaging of Leasehold Estate**. Tenant may, without the consent of Landlord, mortgage or otherwise encumber the Leasehold Estate (which mortgage or other encumbrance is hereinafter referred to as the "**Leasehold Mortgage**"). The mortgagee under the Leasehold Mortgage or the other holders of the indebtedness secured by the Leasehold Mortgage (the "**Leasehold Mortgagee**") shall notify Landlord (and any Fee Mortgagee, as hereinafter defined), of the execution of such Leasehold Mortgage and the name and place for service of notice upon such Leasehold Mortgagee. Upon such notification of Landlord that Tenant has entered into a Leasehold Mortgage.

ARTICLE 13

Environmental Provisions

13.1 **Definitions**

For purposes of this Lease the following terms shall have the following meanings:

(a) "**Environmental Law**" or "**Environmental Laws**" shall mean each and every applicable federal, state, regional, county or municipal statute, ordinance, rule, regulation, order, code, directive or requirement, relating to the environment or Hazardous Material (as defined in subsection (b) below), including without limitation the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601 et seq.; the Federal Water Pollution and Control Act, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; and the Tank Laws (as defined below), now or hereafter existing, together with all successor statutes, ordinances, rules, regulations, orders, directives or requirements now or hereafter existing, and any amendments thereto, regulations promulgated thereunder, and all substitutions thereof.

(b) "**Hazardous Material**" or "**Hazardous Materials**" shall mean (i) any waste, material or substance (whether in the form of a liquid, a solid, or a gas and whether or not airborne) which is deemed to be a pollutant or a contaminant, or to be hazardous, toxic, ignitable, reactive, infectious, explosive, corrosive, dangerous, harmful or injurious to public health or to the environment, and which is now or becomes regulated in the future by or under any Environmental Laws; (ii) petroleum; (iii) asbestos and asbestos containing materials; (iv) any polychlorinated biphenyl or formaldehyde; and (v) any radioactive material.

(c) "**Release**" means depositing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

(d) “**Reports**” means those reports and assessments more particularly described as follows: Landlord provided no Reports.

(e) “**Tank Laws**” shall mean all federal, state, regional, county, or municipal environmental statutes, ordinances, rules, or regulations relating to underground storage tanks, including, without limitation, the Federal Underground Storage Law, Subtitle I of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq., together with any amendments thereto, regulations promulgated thereunder and all substitutions thereof, and any successor legislation and regulations.

“**Remediate**” or “**Remediation**” shall mean the necessary actions to comply with applicable Environmental Law with respect to the unlawful presence of, or suspected discharge of, any Hazardous Materials. Remediation shall include, without limitation: environmental investigation, monitoring and sampling; installation, maintenance, and removal of monitoring wells; removal, treatment, neutralization or containment of any Hazardous Material; storage of excavated materials; and installation, maintenance, storage and removal of machinery and equipment used in connection with the Remediation. Without limitation of the foregoing, Remediation shall include all action required in accordance with all applicable Environmental Laws, at no cost or expense to Tenant, including, without limitation, any long-term inspection, monitoring or maintenance costs for any engineering or institutional controls, and the obtaining by Landlord of a permanent solution and any other comparable “no further action” letters or documentation therefor required under any Environmental Laws. In connection with the foregoing, Landlord shall cooperate with Tenant (and Tenant shall cooperate with Landlord) with regard to the placement, installation, and operation of any necessary remediation systems, provided that such remediation systems and plans shall be implemented so as to not to interfere with or impair Tenant’s proposed use of the Premises or construction of the Improvements by Tenant.

(f) Landlord agrees to indemnify and hold Tenant, its directors, officers, stockholders, employees, agents, attorneys, consultants, contractors and its successors and assigns, harmless from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, judgments, administrative orders, remediation requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorneys’ fees and expenses), arising out of any material misrepresentation of Landlord contained in this Section or any breach by Landlord of its obligations under this Section.

(g) If it is discovered that the Premises contain Hazardous Materials, the presence of which predates this Lease or was not introduced by Tenant, Landlord, at its sole expense, shall take all action required, including Remediation of the Premises, to comply with the covenants herein or applicable legal requirements and, in any event, shall take all action necessary under all applicable Environmental Laws (including, without limitation, any long term inspection, monitoring or maintenance costs for any engineering or institutional controls), all at no cost or expense to Tenant. Landlord’s obligations shall include, without limitation, and to the extent applicable, entering into an Access Agreement with Tenant in connection with such Remediation and obtaining a permanent

solution or comparable no further action letter or certification under any applicable Environmental Laws from applicable Governmental Authorities.

(h) In the event that Tenant shall discover the existence of any Hazardous Materials on the Premises during the course of its construction of the Improvements or otherwise during the Term, Landlord shall be obligated to Remediate such Hazardous Materials at its sole cost and expense, in accordance with applicable Environmental Laws (including the execution of any and all waste manifests or other documents required by the applicable Governmental Authorities in connection therewith), and otherwise in a manner that will not interfere with or impair Tenant's proposed use of the Premises or the construction of Tenant's Improvements thereon (and, notwithstanding anything contained in this Lease to the contrary, such required Remediation which delays Tenant's construction of the Improvements shall be deemed to be a Landlord Delay pursuant to Section 3.1). If, in Tenant's reasonable business judgment, it is necessary to close its business due to the presence of such Hazardous Materials or Landlord's remedial action in connection therewith, or suspend or postpone any construction activity by Tenant, all Rent shall abate during the period of such Remediation. Additionally, Landlord agrees that if Landlord has not removed all such Hazardous Materials within ten (10) days following receipt of written notice from Tenant or Tenant's environmental consultant of the existence of such Hazardous Materials, Tenant shall have the right to an abatement of Rent equal to one (1) day of Rent for each day between the date of Tenant's delivery of written notice to Landlord regarding the discovery of such Hazardous Materials and the actual date upon which the Landlord completes Remediation thereof in compliance with the terms of this Lease and all applicable Environmental Laws and provides Tenant written evidence of such completion. Without limitation of the foregoing, in the event Tenant is unable to open or operate its business or perform its alterations to initially open for business at the Premises for a period in excess of ninety (90) days as a result of Hazardous Materials not introduced to the Premises by Tenant, Tenant may terminate this Lease without further recourse to Landlord, and Landlord shall reimburse Tenant for all hard and soft costs incurred by Tenant in connection with the Premises and this Lease, including, without limitation, costs associated with the preparation of architectural and engineering plans, reports and studies, and all reasonable legal fees. Notwithstanding any other provision of this Lease, Tenant shall be responsible for removal of any underground fuel storage tank on or under the Land and any required Remediation in connection therewith.

13.2 Tenant's Representations, Warranties and Covenants. Tenant hereby represents, warrants, and covenants that:

(a) Tenant agrees not to knowingly allow the Release of any Hazardous Material on, onto or from the Premises that could result in a violation of any Environmental Law or in the creation of liability or obligations, including, without limitation, notification, deed recordation or remediation, under any Environmental Law.

(b) Tenant agrees that it shall not use, handle, generate, treat, store or dispose of, or permit the use, handling, generation, treatment, storage or disposal of any Hazardous Materials (other than those types and quantities contained in normal office

products and environments) in, on, under, around or above the Premises now or at any future time (except in quantities permitted by applicable laws or as required in connection with discovery of any Hazardous Materials during its demolition or construction activities permitted hereunder).

(c) If Tenant is in breach of any of its agreements set forth in this Section, Tenant, at its sole expense, shall take all action required, including Remediation of the Premises, to comply with the covenants herein or applicable legal requirements and, in any event, shall take all action deemed necessary under all applicable Environmental Laws.

(d) Tenant agrees to indemnify and hold Landlord, its directors, officers, stockholders, partners, joint venturers, employees, agents, attorneys, consultants, contractors and its successors and assigns, harmless from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, judgments, administrative orders, remediation requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorneys' fees and expenses), arising out of any breach by Tenant of its obligations under this Section.

(e) Notwithstanding any provision in this Lease to the contrary, Tenant shall not be responsible for, shall have no liability or obligations with respect to, and shall not be obligated to pay for or take any action with respect to (i) the existence of any Hazardous Material on the Premises which occurred or existed prior to the date of the Lease unless caused or knowingly permitted by Tenant, its agents, consultants, or contractors, (ii) the existence of any Hazardous Material on the Premises which occurred or existed after the date of the Lease unless caused or knowingly permitted by Tenant, its agents, employees, consultants, or contractors, (iii) the Release of Hazardous Materials on, onto or from the Premises unless caused or knowingly permitted by Tenant, its agents, employees, consultants, or contractors, or (iv) any violation of any Environmental Laws, unless and to the extent that such was caused or knowingly permitted by Tenant, its agents, employees, consultants, or contractors (collectively, the "Environmental Exclusions"). Notwithstanding anything herein to the contrary, in the event any Hazardous Materials are discovered on (or migrate to) the Premises which Hazardous Materials arise from any of the foregoing Environmental Exclusions, then Landlord shall be obligated to perform Remediation of such Hazardous Materials at its sole cost and expense, in accordance with applicable Environmental Laws and otherwise in a manner that will not interfere with or impair Tenant's proposed use or business operations at the Premises. In the event the presence of such Hazardous Materials is such that Tenant cannot operate at the Premises for the uses permitted hereunder, then all Rent shall abate until such time as Remediation is complete pursuant to this Article 13.

ARTICLE 14

Warranty of Peaceful Possession

14.1 **Peaceful Possession.** Landlord covenants that Tenant, on performing and observing the covenants and agreements herein contained and provided to be performed by Tenant (within any applicable notice or cure period), shall and may peaceably and quietly have, hold, occupy, use, and enjoy the Premises during the Term and may exercise all of its rights hereunder, subject only to the provisions of this Lease and applicable governmental laws, rules, and regulations. Landlord hereby covenants agrees that at no time during the Term shall Landlord or any affiliate of Landlord or any other tenant or occupant of Landlord or any of its affiliates take any action which could reasonably be expected to have an adverse effect on ingress to or egress from the Premises, visibility of the Premises, and/or parking availability at the Premises. In the event of a breach of the foregoing, Tenant shall have, in addition to all other remedies at law or in equity, the right to abate all Rent due hereunder for the duration of any breach of the foregoing covenant. In addition, in the event that such breach continues for greater than thirty (30) days, Tenant shall (in addition to any and all such other rights and remedies and without waiver of such breach), have the right to terminate this Lease by written notice to Landlord. Landlord shall defend Tenant's right to the occupancy, use and enjoyment, and title to the Premises and Tenant's rights described in this Section 14.1 against the claims of any and all persons whomsoever lawfully claiming the same, or any part thereof, subject only to provisions of this Lease and all applicable governmental laws, rules, and regulations.

ARTICLE 15

Default and Remedies

15.1 **Tenant Default.** Each of the following shall be deemed a "Tenant Default" hereunder and a material breach of this Lease:

(a) If Tenant fails to pay any installment of Rent as the same is due and payable and such default continues for ten (10) days.

(b) If Tenant fails to keep, perform or observe any of the covenants, agreements, terms or provisions contained in this Lease that are to be kept or performed by Tenant other than with respect to payment of Rent or other liquidated sums of money and thereafter Tenant fails to commence and take such steps as are necessary to remedy the same within thirty (30) days after Tenant's receipt of written notice specifying the default, or having so commenced, thereafter fails to proceed diligently to cure the same.

(c) If an involuntary petition is filed against Tenant under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import or if a receiver of Tenant, or of all or substantially all of the property of Tenant, is appointed without acquiescence, and such petition or appointment is not discharged or stayed within sixty (60) days after the happening of such event.

(d) If Tenant makes an assignment of its property for the benefit of creditors or files a voluntary petition under any bankruptcy or insolvency law or seeks relief under any other law for the benefit of debtors.

15.2 **Landlord's Remedies.** Upon the occurrence of a Tenant Default beyond any applicable notice and cure period, Landlord may, at any time thereafter prior to the curing of such Tenant Default, do any one or both of the following:

(a) Landlord may terminate this Lease by giving Tenant at least sixty (60) days' prior written notice thereof, in which event this Lease and the leasehold estate hereby created and all interest of Tenant and all parties claiming by, through or under Tenant (except for sublessees as provided in Section 12.2) shall automatically terminate upon the effective date of such notice with the same force and effect and to the same extent as if the effective date of such notice were the day originally fixed in Article 2 for the expiration of the Term. Upon the expiration of such 60-day period, Landlord, its agent, or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Premises and remove all persons and property therefrom with process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches hereof. In the event of such termination, Tenant shall be liable to Landlord for all expenses incurred by Landlord in successfully enforcing its rights hereunder.

(b) Notwithstanding anything contained herein to the contrary, Landlord shall never be entitled to dispossess Tenant of the Premises pursuant to any "lock out" or other nonjudicial remedy, Landlord hereby waiving its right to forcibly dispossess Tenant from the Premises, whether peaceably or otherwise, without judicial process, such that Landlord shall not be entitled to any "commercial lock-out" or any other provisions of applicable law which permit landlords to dispossess tenants from commercial properties without the benefit of judicial review.

15.3 **Landlord Default.** Each of the following shall be deemed a "Landlord Default" hereunder and a material breach of this Lease:

(a) If Landlord fails to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Lease that are to be kept or performed by Landlord, and Landlord fails to commence and take such steps as are necessary to remedy the same within thirty (30) days after Landlord's receipt of written notice from Tenant specifying the same, or having so commenced, thereafter fails to proceed diligently to cure the same.

(b) If an involuntary petition is filed against Landlord under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import or if a receiver of Landlord, or of all or substantially all of the property of Landlord, is appointed without acquiescence, and such petition or appointment is not discharged or stayed within sixty (60) days after the happening of such event.

(c) If Landlord makes an assignment of its property for the benefit of creditors or files a voluntary petition under any bankruptcy or insolvency law or seeks relief under any other law for the benefit of debtors.

15.4 **Tenant's Remedies.** Upon the occurrence of a Landlord Default beyond any notice and cure period, Tenant may, at any time thereafter prior to the curing thereof and without waiving any other rights hereunder or available to Tenant at law or in equity (Tenant's rights being cumulative), do any one or both of the following:

(a) Tenant may perform Landlord's obligations hereunder and offset the reasonable costs and expenses incurred by Tenant in doing so, together with interest thereon at the rate of ten percent (10%) per annum from the date expended until repaid against Base Rent thereafter coming due hereunder until such costs are recouped in full by Tenant.

(b) If a Landlord Default renders all or any portion of the Premises untenable for those uses incidental to or customarily associated with the operation of Tenant's use as permitted hereunder for more than sixty (60) days, Tenant may, without limiting any of its other rights and remedies on account thereof, terminate this Lease, in which event Tenant shall have no further rights, duties or obligations hereunder, and Landlord shall reimburse Tenant in an amount equal to the costs of Tenant's Improvements and Alterations, amortized over the useful life thereof within thirty (30) days after Tenant's written demand therefor.

ARTICLE 16

CONTINGENCIES

16.1 **Contingencies for the Benefit of Landlord and Tenant.** The obligations of Landlord and of the Tenant under this Lease are contingent upon each of the following (each called a "Contingency," and collectively called the "Contingencies"):

(a) **Shared Parking Agreement.** On or before August 31, 2022 (the "**Contingency Date**"), Landlord, Tenant and the FM CVB shall have entered into a Shared Parking Agreement addressing the matters described in the Recitals hereof. In the event a Shared Parking Agreement has not been executed by the Landlord, Tenant and the FM CVB on or before the Contingency Date, then either Landlord or Tenant may exercise this contingency, upon notice to the other, and upon such notice, this Lease shall be deemed immediately terminated. If this contingency has not been satisfied by the Contingency Date, either Landlord or Tenant may extend the Contingency Date for two (2) consecutive one (1) month periods, by written notice to the other party delivered prior to the expiration of the Contingency Date or the last extended Contingency Date, as the case may be.

ARTICLE 17

Replatting of the Land

17.1 **Land to be Replatted.** Tenant will file with the City of Fargo Office of Planning and Development an application for a replat of the Land into two lots, or more lots as may be appropriate, establishing the Premises and CVB Parcel as separately-

platted lots. To the extent that the resulting lots to be platted introduce a change in the legal description of the Premises, as defined herein at Exhibit B, the parties agree that said Premises shall be revised and amended in accordance with such re-platted description and the parties agree to execute any documents necessary to effect such revision or amendment and such documents may be recorded in the Recorder's Office, Cass County, North Dakota. Tenant will be responsible for the costs associated with the platting process, including costs of filing the re-plat application with the Planning Department. The Landlord and Tenant agree to cooperate with each other, and with the FM CVB, regarding the application and approval process with a goal of successfully replatting the Land; however, failure of such a replat to be finally approved and filed with the Cass County Recorder shall not be deemed a breach of this Lease by either party nor shall it cause any termination or limitation of the terms of this Lease.

ARTICLE 18

Miscellaneous

18.1 **Notices**. Any notice hereunder shall be in writing and shall be deemed to have been properly given when sent by (a) courier; (b) United States Certified Mail, Return Receipt Requested, postage prepaid; or (c) a nationally recognized overnight courier, shipping charges prepaid, to the addresses which follow: Notice given in accordance herewith shall be effective upon receipt at the address of the addressee, as evidenced by the executed postal receipt or other receipt for delivery. For purposes of notice the addresses of the parties hereto shall, until changed, be as follows:

Landlord:	City of Fargo Attn: City Auditor 225 North 4 th Street Fargo, ND 58102
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AND

City of Fargo
Attn: Director of Facilities
225 North 4th Street
Fargo, ND 58102

Tenant	The Chamber Fargo Moorhead West Fargo
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The parties hereto shall have the right from time to time to change their respective addresses for purposes of notice hereunder to any other location within the United States by giving a notice to such effect in accordance with the provisions of this Section.

18.2 **Performance of Other Party's Obligations**. If either party hereto fails to perform or observe any of its covenants, agreements or obligations hereunder for a period

of thirty (30) days after notice of such failure is given by the other party, then the other party shall have the right, but not the obligation, at its sole election (but not as its exclusive remedy), to perform or observe the covenants, agreements or obligations which are asserted to have not been performed or observed at the expense of the other party, and to recover all reasonable, out-of-pocket costs or expenses incurred in connection therewith, together with interest thereon at a rate of ten percent (10%) per annum from the date expended until repaid. Notwithstanding the foregoing, if either party determines, in such party's reasonable good faith judgment that an emergency, involving imminent danger of injury or death to persons or damage to property in excess of \$100,000.00 exists due to the other party's failure to observe or perform such party's covenants, agreements and obligations hereunder, then such party may immediately perform or observe the covenants, agreements and obligations which give rise to such emergency at the expense of the failing party. Any performance or observance by a party pursuant to this Section shall not constitute a waiver of the other party's failure to perform or observe.

18.3 Modification and Non-Waiver. No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless set forth in writing executed by both parties hereto. No waiver by either party of any breach or default of any term, condition, or provision hereof, including without limitation the acceptance by Landlord of any Rent at any time or in any manner other than as herein provided, shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character, or description under any circumstance. No waiver of any breach or default of any term, condition or provision hereof shall be implied from any action of any party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving party.

18.4 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of North Dakota.

18.5 Number and Gender; Caption; References. Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Article and section headings in this Lease are for convenience of reference and shall not affect the construction or interpretation of this Lease. Whenever the terms "hereof", "hereby", "herein" or words of similar import are used in this Lease they shall be construed as referring to this Lease in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "Article" or "Section" shall be construed as referring to the indicated article or section of this Lease.

18.6 Estoppel Certificate. Landlord and Tenant shall execute and deliver to each other, within a reasonable time following written request therefor by the other party, a certificate addressed as indicated by the requesting party and stating to the best of its actual knowledge:

(a) whether or not this Lease is in full force and effect, and if alleged that the Lease is not in full force and effect, then specifying the reasons therefor;

- (b) whether or not this Lease has been modified or amended in any respect, and submitting copies or descriptions of such modifications or amendment;
- (c) whether or not there are any existing defaults hereunder known to the party executing the certificate, and specifying the nature thereof;
- (d) whether or not any particular article, section or provision of this Lease has been complied with;
- (e) the date to which the Rent due pursuant to this Lease has been paid;
- (f) whether there are any offsets, counterclaims, or defenses thereto on the part of the other party; and
- (g) such other matters as may be reasonably requested.

Any such estoppel certificate may be relied upon by the party requesting it and any other person, firm, entity, or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing the same.

18.7 **Exhibits**. All exhibits and addenda attached hereto are incorporated herein for all purposes.

18.8 **Severability**. If any provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

18.9 **Surrender of Premises; Holding Over**. (a) Tenant shall quit and surrender the Premises at the expiration or earlier termination of this Lease in vacant and broom clean condition, damage by eminent domain, fire and casualty, and all alterations, additions, and Improvements (excluding any Tenant's Equipment which Tenant removes from the Premises in accordance with the terms hereof) excepted. At the expiration or earlier termination of this Lease, any holdover shall be from month to month at 125% of the Base Rent for the month preceding the expiration or earlier termination of this Lease, and otherwise on the same terms and conditions as herein provided. Landlord and Tenant acknowledge and agree that Landlord's exact damages on account of such holding over would be difficult or impossible to ascertain, and that such increased Base Rent represents the parties' reasonable estimate of such damages. Such increased Base Rent shall constitute liquidated and final damages on account of such holding over, and in no event shall Tenant be liable for any other direct or indirect damages on account thereof, including, without limitation, lost profits or other consequential damages or any kind or nature.

18.10 **Relation of Parties**. It is the intention of Landlord and Tenant to hereby create the relationship of landlord and tenant, and no other relationship whatsoever is

hereby created. Nothing in this Lease shall be construed to make Landlord and Tenant partners or joint venturers or to render either party hereto liable for any obligation of the other.

18.11 **Force Majeure.** Neither party shall be required to perform any term, covenant or condition of this Lease so long as such performance is delayed or prevented by Force Majeure (as hereafter defined), including, without limitation, Tenant's waiver or satisfaction of the Due Diligence Contingency, the Approvals Contingency, the Building Permit Contingency, and/or the satisfaction of the Delivery Conditions, and all time periods permitted hereunder for the performance of any such term, covenant, or condition shall be tolled on a day-for-day basis upon written notice from either party to the other of such party's inability to perform or satisfy any such term, covenant, or condition of this Lease due to a Force Majeure. For purposes hereof, a "**Force Majeure**" shall mean any acts of God; strike; lockout; material or labor restriction by any governmental authority or any delays, backlogs, or slowdowns associated with the same; inability to obtain materials due to supply chain disruptions; civil riot; declared state of emergency or public health emergency or pandemic (including, without limitation, Covid-19); government mandated quarantine or travel bans; government mandated closures, disruption, breakdown, delayed production or interruption for any period of time; interruptions to transportation, or the use of equipment, labor, or materials, including, without limitation, the closure of government buildings, airports, harbors, railroads, or pipelines, or other infrastructure due to worldwide or regional pandemic or other health related event disruptions; and any other cause not reasonably within the control of such party and which by the exercise of due diligence such party is unable, wholly or in part, to prevent or overcome.

18.12 **Entire Agreement.** This Lease constitutes the entire agreement of the parties hereto with respect to its subject matter, and all prior agreements with respect thereto are merged herein. Any agreements entered into between Landlord and Tenant of even date herewith are not, however, merged herein.

18.13 **Successors and Assigns.** This Lease shall constitute a real right and covenant running with the Premises, and, subject to the provisions hereof pertaining to Tenant's rights to assign, sublet or encumber, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

18.14 **Landlord's Joinder.** Landlord agrees to join with Tenant in the execution of statutory notices of commencement and such applications for permits and licenses from any Governmental Authority as may be reasonably necessary or appropriate to effectuate the intents and purposes of this Lease, provided that no such application shall constitute an encumbrance of or with respect to the Premises, and Landlord shall not incur or become liable for any obligation as a result thereof.

18.15 **No Third Parties Benefitted.** The terms and provisions of this Lease are for the sole benefit of Landlord and Tenant, and no third party is intended to benefit herefrom.

18.16 **Survival**. Any terms and provisions of this Lease pertaining to rights, duties or liabilities extending beyond the expiration or termination of this Lease shall survive the end of the Term.

18.17 **Time of Essence**. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

18.18 **Holidays**. If a date for performance by either party falls on a Saturday, Sunday or on a legal holiday, such date for performance shall instead be the next following business day.

18.19 **Waiver of Jury Trial**. LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES AND/OR ANY CLAIM OF INJURY OR DAMAGE. The waiver of trial by jury in the immediately preceding sentence is voluntarily and intentionally made by Landlord and Tenant.

18.20 **Counterparts; Electronic Signatures**. This Lease may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties agree that this Lease shall be deemed validly executed and delivered by a party if a party executes this Lease by manual signature or by affixing its signature hereto by means of an electronic signature tool, application, or software (e.g., DocuSign).

18.21 **Effective Date**. This Lease shall take effect the date last signed by the parties below [the "**Effective Date**"].

[Remainder of page blank – execution page to follow]

Date: _____, 2022

Tenant:

The Chamber Fargo Moorhead West
Fargo,
a North Dakota non-profit corporation

By: _____

Its: _____

Date: _____, 2022

Landlord:
City of Fargo,
a North Dakota municipal corporation

By: _____
Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steven Sprague, City Auditor

EXHIBIT A

Legal Description of Land

A portion of Lot 4, Block 1, West Acres Business Park Addition to the City of Fargo,
Situated in the county of Cass, in the state of North Dakota.

EXHIBIT B

Legal Description of the Premises

[[[insert new legal description of the "Premises" (being part of Lot 4, Block 1, West Acres Business Park Addition to the City of Fargo, situate in the county of Cass, in the state of North Dakota.)]]]

EXHIBIT C**RENT COMMENCEMENT DATE LETTER**

Ground Lease Dated: _____, 202__

Landlord:

Tenant:

Premises:

Landlord and Tenant hereby agree that the Rent Commencement Date for the Ground Lease is

_____, 20__, and the last day of the Initial Term shall be _____, 20__.

EXECUTED as of the dates set forth below.

Landlord:

By: _____

Name: _____

Title: _____

Tenant:

By: _____

Name: _____

Title: _____

CITY ATTORNEY
Nancy J. Morris

**OFFICE OF THE
CITY ATTORNEY**

SERKLAND LAW FIRM

10 Roberts Street North

P.O. Box 6017

Fargo, ND 58108

Phone: 701.232.8957 | Fax: 701.237.4049

ASSISTANT CITY ATTORNEYS

Ian R. McLean • Alissa R. Farol • William B. Wischer

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May 26, 2022

Board of City Commissioners
City Hall
225 4th Street North
Fargo, ND 58102

RE: Ordinance Enactment: Designated Passenger Loading Areas and
Ordinance Amendment: Classification of Ordinance Violations

Dear Mayor Mahoney and Commissioners,

At the request of the police department and in accordance with the commission's directive on May 16, 2022, enclosed is proposed Fargo Municipal Code § 8-1026 establishing parking regulations for designated passenger loading areas. Fargo Municipal Code § 1-0305 is amended to reflect the proposed penalty for violations of the parking ordinance.

This parking ordinance creates designated areas, by resolution, for short term vehicle parking (10 minutes) to pick up passengers. Signs will be prominently placed to alert drivers of the 10 minute parking limitation, and that they must remain with the vehicle while in the designated area. The proposed ordinance provides for a \$20 fine for a violation of the terms. This amount is consistent with other parking violations.

Suggested Motion: I move to waive the receipt and filing of the enclosed ordinances one week prior to first reading and that this be the first reading, by title, of An Ordinance (1) enacting Fargo Municipal Code section 8-1026 of Article 8-10 of Chapter 8, relating to Designated Passenger Loading Areas, and (2) amending Fargo Municipal Code section 1-0305 of Article 1-03 of Chapter 1, relating to Classification of Ordinance Violations.

Sincerely,



William Wischer

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 AN ORDINANCE ENACTING SECTION 8-1026
2 OF ARTICLE 8-10 OF CHAPTER 8 OF THE FARGO MUNICIPAL CODE RELATING TO
3 DESIGNATED PASSENGER LOADING AREAS
4 AND
5 AN ORDINANCE AMENDING SECTION 1-0305
6 OF ARTICLE 1-03 OF CHAPTER 1 OF THE FARGO MUNICIPAL CODE RELATING TO
7 CLASSIFICATION OF ORDINANCE VIOLATIONS

8 WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in
9 accordance with Chapter 40-05.1 of the North Dakota Code; and,

10 WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City
11 shall have the right to implement home rule powers by ordinance; and,

12 WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said
13 home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict
14 therewith and shall be liberally construed for such purposes; and,

15 WHEREAS, the Board of City Commissioners deems it necessary and appropriate to
16 implement such authority by the adoption of this ordinance;

17 NOW, THEREFORE,

18 Be It Ordained by the Board of City Commissioners of the City of Fargo:

19 Section 1. Enactment.

20 Section 8-1026 of Article 8-10 of Chapter 8 of the Fargo Municipal code is hereby enacted as
21 follows:
22
23

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

SECTION 8-1026

DESIGNATED PASSENGER LOADING AREAS

- A. No owner, driver, or person operating or in charge of any vehicle may stop, stand, or park in an area designated for passenger loading for longer than 10 minutes during the following times:
- (1) Thursday at 10:00 p.m. until Friday at 3:00 a.m.;
 - (2) Friday at 10:00 p.m. until Saturday at 3:00 a.m.; and
 - (3) Saturday at 10:00 p.m. until Sunday at 3:00 a.m.
- B. The owner, driver, or person operating or in charge of any vehicle within the designated passenger loading area must remain with the vehicle at all times.
- C. The board of city commissioners, by resolution, may establish designated passenger loading areas. The board shall cause to be erected and maintained signs designating the provisions of the resolution in each designated passenger loading area. Enforcement of the ordinance shall not be effective until signs are erected.

Section 2. Amendment.

1-0305. Classification of Ordinance Violations.

* * * *

- C. Violations of the following ordinances are noncriminal offenses and shall require payment of a fee as follows:

* * * *

13. The determination of the fees payable for parking violations described in articles 8-10, 8-17, and section 9-0705 shall be based upon the vehicle that is found to be in violation of said article and the owner of the vehicle shall be responsible for payment of the fees.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

- 1 a. With respect to violations in the central business district, as defined
2 in section 8-0101, for a violation of section 8-1006, and section 8-
3 1009, the fee for such violation shall be \$20.00 for the first violation
4 associated with the vehicle within the prior six-month period,
5 \$20.00 for a second violation within six months of said first
6 violation and \$25.00 for a third violation within six months of the
7 said second violation and \$30.00 for the fourth violation within six
8 months of the said third violation and for every subsequent violation
9 within six months of the next-preceding violation. As to violations
10 of sections 8-1006 and 8-1009, the person issuing the ticket for the
11 parking violation is authorized to waive the fee and, instead, to issue
12 a warning ticket, for the first said violation. At such time as a period
13 of six months or more elapses without a parking ticket for any
14 violation of article 8-10 having been issued for a particular vehicle,
15 the next violation shall be treated as an initial violation.
- 16 b. Violations. With respect to parking violations other than in the
17 central business district, for a violation of sections 8-1001, 8-1002,
18 8-1004, 8-1005, 8-1006, 8-1006.1, 8-1007, 8-1008, 8-1009, 8-1012,
19 8-1014 through 8-1024, 8-1026, the fee for such violation shall be
20 \$20.00.

21 * * * *

22 Section 3. Penalty.

23 A person who violates ordinance section 8-1026 shall be deemed to have committed a non-
 criminal offense and shall pay a fee of \$20 as provided in Section 1-0305 of the Fargo
 Municipal Code, as the same may be amended from time to time.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 4. Effective Date.

This ordinance shall be in full force and effect from and after its passage, approval, and publication.

Timothy J. Mahoney, MD, Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

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AUDITOR'S OFFICE

Fargo City Hall
225 4th Street North
PO Box 2471
Fargo, ND 58108
Phone: 701.241.8108 | Fax: 701.241.8184
www.FargoND.gov

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: June 14 2022 Election Ballot Wording Errors

DATE: May 26, 2022

The City of Fargo Auditor's Office became aware of some errors on the ballot wording for the City question regarding term limits. The ballot contains some typographical errors that were not noticed in the normal course of proofreading the ballots. The errors are as follows: (1) "move then" should be "more than"; and (2) "had" should be "has" (highlighted below).

Fargo City Measure No. 1	
Shall a Fargo city ordinance establishing certain term limits be enacted, in which no member of the board of city commissioners may serve move then three (3) successive four-year terms and in which any member who had served in the capacity of Mayor, as well as city commissioner, may not serve more than four (4) successive four-year terms, all as provided in the Notice of Proposed Fargo City Ordinance as published in THE FORUM on the 6th day of April, 2022. Shall such ordinance be approved?	
<input type="radio"/>	Yes - Means you approve the measure as summarized above.
<input type="radio"/>	No - Means you reject the measure as summarized above.

After discussion with the City Attorney and the Cass County States Attorney, the following options appear to be most relevant; (1) declare the typographical errors to be non-fatal (not

C:\Users\jpage\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\7Q8Z87Z7\BOCC 2022 Election Ballot Wording typos May 31 2022.doc

material) and proceed with the ballot as printed; or (2) determine this ballot to be invalid and place the question on the ballot in November. Note that the ballot question is a summary of the ordinance adopted by the City Commission pursuant to Resolution. The ballot question does not state the entire ordinance; rather it is a summary of the general intent of the proposed ordinance change, i.e. do you approve of term limits; yes or no.

Recommended Motion:

- (1) Declare the typographical errors to be non-fatal (not material) such that the intent of the ballot question as it relates to implementing the proposed ordinance is not impaired;**

OR

- (2) Declare the ballot question invalid and place the question on the November General Election ballot.**



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May 12, 2022

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1005 4th St N as submitted by David Huebner. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for 5 years.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$265 with the City of Fargo's share being \$45.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Splonskowski".

Mike Splonskowski
City Assessor

nlb
attachment

Application For Property Tax Exemption For Improvements To Commercial And Residential Buildings

N.D.C.C. ch. 57-02.2

(File with the city assessor or county director of tax equalization)

Property Identification

1. Legal description of the property for which exemption is claimed LOT 11 BLOCK 12 HECTORS
2. Address of Property 1005 4 ST N
3. Parcel Number 01-1160-02180-000
4. Name of Property Owner DAVID THOMAS HUEBNER Phone No. 701-552-2859
5. Mailing Address of Property Owner SAME

Description Of Improvements For Exemption

6. Describe type of renovating, remodeling, alteration or addition made to the building for which exemption is claimed (attach additional sheets if necessary). REPLACE WIRING/PLUMBING-REMOVED WALL
FINISH AS NEEDED-STARTED UNDER BP 142039
7. Building permit No. 18071198 8. Year built (residential property) 1915
9. Date of commencement of making the improvements 07/23/2018
10. Estimated market value of property before the improvements \$ 144,400.00
11. Cost of making the improvement (all labor, material and overhead) \$ 30,000
12. Estimated market value of property after the improvements \$ 164,500.00

Applicant's Certification And Signature

13. I certify that the information contained in this application is correct to the best of my knowledge.
Applicant *David Thomas Huebner* Date 2022-02-15

Assessor's Determination And Signature

14. The assessor/county director of tax equalization finds that the improvements described in this application
do ☒ do not ☐ meet the qualifications for exemption for the following reason(s):

Assessor/Director of Tax Equalization *Walter J. Sclanville* Date 5-19-2022

Action Of Governing Body

15. Action taken on this application by the governing board of the county or city: Approved ☐ Denied ☐
Approval is subject to the following conditions:

Exemption is allowed for years 20 __, 20 __, 20 __, 20 __, 20 __.
Chairperson Date